161 U.S. 65

RECORD, CASE No. 14,930.

161-65

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., ~~1450.~~ 948 634 343

AMANDA W. FRANCE, PLAINTIFF IN ERROR,

vs.

JOHN W. CONNOR AND WILLIAM R. BROWN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WYOMING

FILED NOVEMBER 10, 1891.

RECORD, CASE No. 14,930.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., 1456.

AMANDA W. FRANCE, PLAINTIFF IN ERROR,

vs.

JOHN W. CONNOR AND WILLIAM R. BROWN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WYOMING.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 21, 1891.

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1 In the Supreme Court of the State of Wyoming.

AMANDA W. FRANCE, Plaintiff in Error,
vs.
JOHN W. CONNOR and WILLIAM R. BROWN, Defendants in Error.

To the Honorable Herman V. S. Groesbeck, chief justice of the supreme court of the State of Wyoming:

Comes now Amanda W. France, plaintiff in error, by Charles N. Potter, her attorney, and complains that in the record and proceedin-s and also in the rendition of a judgment in a suit between Amanda W. France, plaintiff in error, and John W. Connor and William R. Brown, defendants in error, in the supreme court of the State of Wyoming, the same being the highest court of said State in which a decision in said suit could be had, and in which a final judgment was rendered against the said plaintiff in error on the first day of June, A. D. 1891, in said suit, wherein a right, title, and privilege and certain rights, titles, and privileges were specifically set up and claimed under a certain statute and certain statutes of the United States, to wit, an act entitled "An act to amend an act entitled 'An act to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States in reference to bigamy, and for other purposes,' approved March 22nd, 1882," which act became a law and took effect, without the signature of the President, on the 3rd day of March, A. D. 1887, and the decision was
2 against the right, title, and privilege and the rights, titles, and privileges specially set up and claimed, all of which appears in the records and proceedings in said suit, manifest error hath happened, to the great damage of said plaintiff.

Wherefore she prays that a writ of error be allowed, as well as such other process as may cause the same to be corrected by the Supreme Court of the United States.

CHARLES N. POTTER,
Attorney for Amanda W. France, Plaintiff in Error.

Writ of error as prayed for allowed this 12th day of September, A. D. 1891.

HERMAN V. S. GROESBECK,
Chief Justice of the Supreme Court of the State of Wyoming.

3 [Endorsed:] Doc. 2, No. 70. Supreme court, State of Wyoming. Amanda W. France, pl'ff in error, *vs.* John W. Connor and William R. Brown, defendants in error. Petition for writ of error to Supreme Court of United States. Supreme court, Wyoming. Filed Sep. 12, 1891. Richard H. Repath, clerk. C. N. Potter, att'y for pl'ff in error.

4 In the Supreme Court of the United States.

AMANDA W. FRANCE, Plaintiff in Error,
vs.
JOHN W. CONNOR and WILLIAM R. BROWN, Defendants in Error.

The United States of America to John W. Connor and William R. Brown:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington on the eleventh day of November, A. D. 1891, pursuant to writ of error filed in the clerk's office of the supreme court of the State of Wyoming, wherein Amanda W. France is plaintiff in error and you and each of you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error mentioned in the said writ of error should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this twelfth day of September, in the year of our Lord one thousand eight hundred and ninety-one.

HERMAN V. S. GROESBECK,
Chief Justice of the Supreme Court of the State of Wyoming.

5 We hereby acknowledge service of the within instrument this 14th day of September, A. D. 1891, the same having been served by Charles N. Potter, attorney of record of the plaintiff in error.

BROWN & ARNOLD,
Attorneys for Defendant- in Error.

6 UNITED STATES OF AMERICA, }
State of Wyoming, County of Laramie, } *ss:*

Charles N. Potter, being duly sworn, deposes and says that he is the attorney of record for the plaintiff in error in the case of Amanda W. France, plaintiff in error, *vs.* John W. Connor and William R. Brown, defendants in error; that on the fourteenth day of September, A. D. 1891, at the city of Laramie, in the county of Albany, in the State of Wyoming, he served the within and annexed citation upon Messrs. Brown & Arnold, attorneys of record for John W. Connor and William R. Brown, defendants in error, by delivering a true copy of said citation to Melville C. Brown, at his office, in said city, county, and State, the said Melville C. Brown being a member of said firm of Brown & Arnold.

CHARLES N. POTTER.

Subscribed in my presence and sworn to before me this 30th day of October, A. D. 1891.

[Seal Louise S. Smith, Notary Public, Laramie County, Wyoming.]

LOUISE S. SMITH,
Notary Public.

7 [Endorsed:] In the Supreme Court of the United States. Amanda W. France, plaintiff in error, *vs.* John W. Connor and William R. Brown, defendants in error. Citation. Supreme court, Wyoming. Filed Sep. 12, 1891. Richard H. Repath, clerk. C. N. Potter, att'y for pl'ff in error.

8 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable judges of the supreme court of the State of Wyoming, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said supreme court of the State of Wyoming, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the suit between Amanda W. France and John W. Connor and William B. Brown, wherein was drawn in question the construction of a statute of the United States and wherein a title, right, and privilege and certain rights, titles, and privileges were claimed under a statute and certain statutes of the United States and the decision was against the title, right, and privilege and titles, rights, and privileges specially set up or claimed under such statute or statutes, manifest error hath happened, to the great damage of the said Amanda W. France, as by her complaint appears, we, being willing that any error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the

9 Supreme Court of the United States, together with this writ, so that you have the same at Washington on the eleventh day of November, A. D. 1891, next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and cu-toms of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, this twelfth day of September, in the year of our Lord one thousand eight hundred and ninety-one.

[Seal United States Circuit Court, District of Wyoming.]

LOUIS KIRK,
Clerk of the United States Circuit Court
for the District of Wyoming.

10 [Endorsed:] Doc. 2, No. 70. In the Supreme Court of the United States. Amanda W. France, plaintiff in error, *vs.* John W. Connor and William R. Brown, defendants in error. Writ of error. Supreme court, Wyoming. Filed Sep. 12, 1891. Richard H. Repath, clerk. Charles N. Potter, att'y for plaintiff in error.

11 STATE OF WYOMING, *ss:*

In the Supreme Court.

In obedience to the mandate of the foregoing writ, I, Richard H. Repath, clerk of the supreme court of the State of Wyoming, do herewith transmit to the honorable the Supreme Court of the United States a true and complete transcript of the record and proceedings had in the case of Amanda W. France, plaintiff in error, *vs.* John W. Connor and William R. Brown, defendants in error, as fully as the same remains on file and of record in my office.

I do also transmit herewith the original petition for writ of error to the Supreme Court of the United States, and the original allowance of said writ by the chief justice of the supreme court of the State of Wyoming endorsed on said petition, and the original citation issued by said chief justice, as full and entire as the same were respectively filed and appear on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court, at my office, in the city of Cheyenne, this thirtieth day of October, A. D. 1891.

[Seal Supreme Court, Territory of Wyoming.]

RICHARD H. REPATH,
Clerk of the Supreme Court of the State of Wyoming.

12 In the Supreme Court of the State of Wyoming.

AMANDA W. FRANCE, Plaintiff in Error,
vs.
JOHN W. CONNOR and WILLIAM R. BROWN, Defendants in Error.

Transcript.

Be it remembered that on the 7th day of November, A. D. 1889, the said plaintiff in error, Amanda W. France, filed in the office of the clerk of the supreme court of the Territory, now State of Wyoming the following petition in error herein, the same being accompanied by a transcript and copy of the journal entries, record, judgment, and proceedings in said cause in the district court of the third judicial district of the Territory of Wyoming, sitting within and for the county of Carbon; which said petition in error and the exhibits thereto attached are in the words and figures following, to wit:

13 In the Supreme Court of the Territory of Wyoming.

AMANDA W. FRANCE, Plaintiff in Error,
vs.
JOHN W. CONNOR and WILLIAM R. BROWN, Defendants in Error.

Petition in Error.

The said Amanda W. France, plaintiff in error, complains of the said John W. Connor and William R. Brown, defendants in error, for that the said John W. Connor and William R. Brown, at the October,

1889, term of the district court of the third judicial district of the Territory of Wyoming, sitting within and for the county of Carbon, recovered a judgment by the consideration of said court against the said plaintiff in error in a certain action then pending in said court, wherein the said Amanda W. France was plaintiff and the said John W. Connor and William R. Brown were defendants, a transcript and copy of the journal entries, record, and judgment and proceedings in which case, duly certified, is hereto attached, marked "A," and made a part of this petition; and the said Amanda W. France avers that there is error in the said record and proceedings, to wit:

First. That the said court erred in sustaining the demurrer of the defendants to the petition of the plaintiff.

Second. That the court erred in rendering judgment in favor of the defendants and against the plaintiff.

14 The said Amanda W. France, plaintiff in error, therefor- prays that said judgment may be reversed and the said plaintiff restored to all things she has lost by reason thereof.

CHARLES N. POTTER,
Attorney for Plaintiff in Error.

15 "A."

TERRITORY OF WYOMING, } ss:
County of Carbon, }

In the District Court, Third Judicial District.

AMANDA W. FRANCE, Plaintiff,
vs.
JOHN W. CONNOR and WILLIAM R. BROWN, Defendants.

Transcript.

Be it remembered that on the first day of April, A. D. 1889, the plaintiff in the above-entitled action filed her petition herein; which said petition is in the words and figures following, to wit:

TERRITORY OF WYOMING, } ss:
County of Carbon, }

In the District Court, Third Judicial District.

AMANDA W. FRANCE, Plaintiff,
vs.
JOHN W. CONNOR and WILLIAM R. BROWN, Defendants.

Petition.

Comes now the plaintiff, Amanda W. France, and for cause of action alleges—

That the said plaintiff, on the seventh day of February, A. D. 1887, at Denver, in the State of Colorado, intermarried with James

France, late of the county of Carbon, in the Territory of
16 Wyoming, who afterwards, on the twenty-first day of August, A. D. 1888, departed this life intestate, leaving said plaintiff, his widow, surviving him.

That the said James France, during the marriage between said plaintiff and the said James France, was seized of an estate of inheritance in the following-described lands, tenements, and real estate situate, lying, and being in the county of Carbon, in the Territory of Wyoming, to wit:

Lots number one (1), two (2), three (3), four (4), five (5), six (6), seven (7), and eight (8), in block number thirty-nine (39), in the town of Rawlins, in Carbon county, Wyoming, as laid down and described in the plat of the third addition to the said town of Rawlins on file and recorded in the office of the county clerk and *ex officio* register of deeds of said Carbon county.

An undivided two-thirds interest of, in, and to lots number seven (7) and eight (8), in block number fourteen (14), in the town of Rawlins, county of Carbon and Territory of Wyoming, as said lots are laid down and described in the town plat of said town of Rawlins on file and recorded in the office of the county clerk and *ex officio* register of deeds of said Carbon county, together with the buildings and improvements thereon, said lots being eighty-eight (88) feet on Cedar street by one hundred thirty-two (132) feet on Fifth street, in said town.

An undivided one-half interest in lots three (3) and four (4), in block five (5), in the town of Rawlins, in the plat of first addition to said town of Rawlins on file and recorded in the office of the county clerk and *ex officio* register of deeds of said Carbon county.

An undivided one-half interest in lots one (1), two (2), and
17 seven (7) and eight (8), in block thirty-two (32), as said lots are laid down and described in the town plat of the second addition to said town of Rawlins, in the county of Carbon and Territory of Wyoming, on file and recorded in the office of the county clerk and *ex officio* register of deeds of said Carbon county.

Lots five (5), six (6), and seven (7) and lots eight (8), nine (9), ten (10), and eleven (11), in block twenty-three (23), in the town of Rawlins, as said lots are described in the town plat of said town of Rawlins on file and recorded in the office of the county clerk and *ex officio* register of deeds of said Carbon county.

Lots twelve (12), thirteen (13), fourteen (14), and (15), in block twenty-three (23), in the town of Rawlins, as said lots are laid down and described in the town plat of said town of Rawlins on file and recorded in the office of the county clerk and *ex officio* register of deeds of said Carbon county, in the Territory of Wyoming, together with all buildings and improvements thereon, including furnace, boiler, pipes, and radiators connected with and constituting the steam-heating apparatus in said premises.

Lots ten (10), eleven (11), and twelve (12), in block fifteen (15), in the town of Rawlins, county of Carbon and Territory of Wyoming, as said lots are laid down and described in the town plat of said town of Rawlins on file and recorded in the office of the county

clerk and *ex officio* register of deeds of said Carbon county, together with all buildings and improvements thereon.

Lot number six (6), in block number eight (8), in the town of Rawlins, county of Carbon and Territory of Wyoming, as laid down and described in the town plat of the first addition to the said town of Rawlins on file and recorded in the office of the county
18 clerk and *ex officio* register of deeds of said Carbon county.

Forty-eight (48) feet off the south end of lots one (1), two (2), three (3), and four (4), in block twenty-three (23), in the town of Rawlins, county of Carbon and Territory of Wyoming, as said lots are laid down and described in the town plat of said town of Rawlins on file and recorded in the office of the county clerk and *ex officio* register of deeds of Carbon county.

Lots one (1), two (2), three (3), and four (4), in block eight (8), in the town of Rawlins, county of Carbon and Territory of Wyoming, as said lots are laid down and described in the town plat of the first addition to the town of Rawlins on file and recorded in the office of the county clerk and *ex officio* register of deeds of said county of Carbon.

All that certain lot or parcel of land fronting twenty-eight (28) feet on Fourth street and extending back ninety-six (96) feet, bounded on the north by the land and premises of A. F. & A. M., on the east by Fourth street, on the south by the land and premises of A. G. Edgerton, and on the west by lot five (5), in block twenty-three (23), said premises being described by metes and bounds as follows:

Commencing on the east line of block twenty-three (23) at a point twenty-eight (28) feet south from the northeast corner of said block twenty-three (23), thence running twenty-eight (28) feet along the east line of said block twenty-three (23); thence running west ninety-six (96) feet at right angles with said east line of lot five, in said block twenty-three (23); thence north twenty-eight (28) feet along the dividing line between lots four (4) and five (5), in said block twenty-three (23); thence east at right angles with said line ninety-six (96) feet to place of beginning, all of said land being in the town of Rawlins, in the county of Carbon and Territory of Wyoming, as laid down and described in the town plat of
19 Rawlins on file and recorded in the office of the county clerk and *ex officio* register of deeds of Carbon county.

Lots seven (7) and eight (8), in block twenty-nine (29), in the town of Rawlins, in the county of Carbon and Territory of Wyoming, as said lots are laid down and described in the plat of the second addition to the said town of Rawlins on file and recorded in the office of the county clerk and *ex officio* register of deeds of said Carbon county.

$\frac{1}{8}$ interest in each of the following-named mining claims, to wit, "Golden Star" lode and "Hope" lode, both of said claims being situated in the Seminole mining district, in the said county of Carbon and Territory of Wyoming.

That said plaintiff, by virtue of her said marriage, upon the death of the said James France became and was entitled to dower in the

lands above described, which said dower has never been assigned or set off to said plaintiff, and she has never received any compensation or equivalent therefor or for any part thereof, and she has never lawfully at any time released her right thereto or to any part thereof.

Plaintiff further alleges that during said marriage, to wit, on the sixteenth day of March, A. D. 1888, the said James France, being insolvent, did make, execute, acknowledge, and deliver to said John W. Connor and William R. Brown an assignment of all of his property for the benefit of his creditors, said assignment being made in accordance with the laws of the Territory of Wyoming; and by said assignment said James France did convey to the said John W. Connor and William R. Brown the lands hereinbefore described; and that thereafter the said John W. Connor and William R. Brown did duly and regularly qualify in accordance with the statute in such cases made and provided as assignees under said assignment and entered into possession and took control of all of the prop-
20 erty and assets of the said James France, including the lands above described, and the said defendants, John W. Connor and William R. Brown, at the time of the decease of said James France, have ever since been and now are in possession and control of the lands above described and hold said lands by virtue of said deed of assignment; that said deed of assignment was, on or about the said sixteenth day of March, A. D. 1888, duly filed and recorded in the office of the judge of probate of the county of Carbon, in said Territory, and also in the office of the county clerk and *ex officio* register of deeds of said county; that within the period prescribed by law the said James France did make out and file with the said probate judge of said county an inventory of all of his property and showing all the matters and things required by law, and the said assignees did duly file their bonds as such assignees.

That said plaintiff has demanded of said defendants that they assign and set off to her her dower in the lands aforesaid, and that the defendants have refused so to do.

That at the time said deed of assignment was made, executed, and delivered and at the time of the decease of the said James France and at all the times between said dates and at all the time during the marriage aforesaid said James France was a resident and citizen of the county of Carbon and Territory of Wyoming and was engaged in business up to the time of said assignment in said county and Territory; that since the death of said James France said defendants have received the rents and profits of said lands and tenements and have not accounted to said plaintiff for the same nor any part thereof.

Wherefore plaintiff prays the aid of this honorable court in the premises, and that upon the hearing thereof a judgment and decree may be made by this honorable court that said plaintiff
21 recover dower in the premises above described, and that such dower may be assigned and set off to her according to law, and that an accounting may be had of the rents and profits of said lands and tenements since the death of said James France, and that

plaintiff may have and recover from said defendants the portion and share thereof to which she is entitled by reason of her dower interest aforesaid, and that said plaintiff may have such other and further relief in the premises as equity may require and that to this honorable court may seem meet.

POTTER & VANDEVANTER,
Attorneys for Plaintiff.

22 TERRITORY OF WYOMING, } ss:
County of Carb , }

Amanda W. France, being first duly sworn, deposes and says that she is the plaintiff in the foregoing petition; that she knows the contents thereof, and that she believes the facts stated in said petition to be true.

AMANDA W. FRANCE.

[SEAL.] Signed in my presence and sworn to before me this first day of April, A. D. 1889.

H. B. HENDERSON,
Notary Public.

And said petition is endorsed on the back as follows:

432. Third district court, Carbon county. Amanda W. France *vs.* John W. Connor & William R. Brown. Petition. Filed April 1st, A. D. 1889. John Stone, clerk, by C. E. Crisman, deputy. Potter & Vandevanter, att'ys for plaintiff.

23 And be it remembered that on the first day of April, A. D. 1889, the said plaintiff filed herein a precipe for summons, which precipe is in the following words and figures, to wit:

TERRITORY OF WYOMING, } ss:
County of Carbon, }

In the District Court, Third Judicial District.

AMANDA W. FRANCE, Plaintiff,
vs.
JOHN W. CONNOR and WILLIAM R. BROWN, Defendants.

Precipe.

The clerk of said court will please issue a summons in this case, directed to the sheriff of Carbon county and returnable according to law.

POTTER & VANDEVANTER,
Attorneys for Plaintiff.

And said precipe is endorsed on back as follows:

432. Carbon county, third district court. Amanda W. France *vs.* John W. Connor and William R. Brown. Precipe. Filed April 1st, A. D. 1889. John Stone, clerk, by C. E. Chrisman, deputy. Potter & Van Devanter, attorneys for plaintiff.

24 And be it remembered that thereafter, to wit, on the 1st day of April, A. D. 1889, a summons was issued in said action; which said summons is in the words and figures following, to wit:

Summons.

THE TERRITORY OF WYOMING, } ss:
County of Carbon, }

To the sheriff of said county, Greeting:

You are hereby commanded to notify John W. Connor and William R. Brown that they have been sued in the district court of the third judicial district of the Territory of Wyoming, sitting in the city of Rawlins, within and for the county of Carbon, in the Territory of Wyoming, for the trial of causes arising under the laws of said Territory, by Amanda W. France, and that unless they answer the petition of the plaintiss herein filed on or before the 4th day of May, A. D. 1889, said petition, with all the matters and allegations therein contained, will be taken as true and judgment rendered accordingly; and make due return of this writ according to law on the 15th day of April, A. D. 1889.

Witness John Stone, clerk of said court, and the seal thereof, at Rawlins, this first day of April, A. D. 1889.

JOHN STONE,
Clerk District Court,
By CHAS. E. CHRISMAN,
Deputy Clerk.

[SEAL.]

And said summons is endorsed on the back as follows:

25 # 432. In Carbon county district court. Amanda W. France *vs.* John W. Connor and William R. Brown. Summons. Filed April 11th, A. D. 1889. John Stone, clerk, by C. E. Chrisman, deputy.

Sheriff's fees:

Service	1 25
Copy	50
Mileage	
Return	25
Total	$2 00

Potter & Van Devanter, attorneys for plaintiff.

THE TERRITORY OF WYOMING, } ss:
County of Carbon, }

I hereby certify that I received within summons on the 2nd day of April, A. D. 1889, at 11 o'clock a. m., and served the same at the county aforesaid on the 2nd, on William R. Brown, 8th, John W. Connor, day of April, A. D. 1889, by delivering a true copy thereof

to John W. Connor and William R. Brown, the within-named defendants.

F. A. HADSELL,
Sheriff of Carbon Co., Wyoming.

26 And be it remembered that thereafter, to wit, on thw 30th day of April, A. D. 1889, there was filed in said action a demurrer to the petition; which said demurrer is in the words and figures following, to wit:

TERRITORY OF WYOMING, } *ss:*
County of Carbon, }

In the District Court, 3rd Judicial District.

AMANDA R. FRANCE, Pl'ffs,
vs.
JOHN W. CONNOR and WILLIAM R. BROWN, Assignees James France, Def'ts.

Comes now the said defendants, by their attorneys, and demur to the petition of the said plaintiffs, and for ground of demurrer state:

1st. That said petition does not state facts sufficient to constitute a cause of action against said defendants and in favor of said *defendants.*

2nd. That said court is without jurisdiction to grant the relief prayed for in said petition.

CORLETT, LACEY & RINER,
BROWN, BLAKE & ARNOLD,
Att'ys for Def'ts.

And said demurrer is endorsed on back as follows:

27 *And said demurrer is endorsed on back as follows:*

432. Amanda R. France *vs.* John W. Connor and W. R. Brown. Demurrer to petition. Filed April 30th, 1889, A. D. John Stone, clerk. Corlett, Lacey & Riner & Brown, Blake & Arnold, att'ys for def'ts.

And be it remembered that on the 13th day of May, A. D. 1889, that being one of the regular days of the May, 1889, term of the district court of the third judicial district of the Territory of Wyoming, sitting within and for the county of Carbon, the following proceedings were had, to wit:

AMANDA W. FRANCE
vs.
JOHN W. CONNOR and WILLIAM R. BROWN. } # 432.

On motion of plaintiffs it is ordered by the court that the above-entitled cause be placed on the trial docket for the present term of this court.

And be it remembered that thereafter, to wit, on the 16th day of May, A. D. 1889, the same being one of the regular days of the May, 1889, term of the district court of the third judicial district of the Territory of Wyoming, sitting within and for the county of
28 Carbon, the following proceedings were had, to wit:

AMANDA W. FRANCE
vs.
JOHN W. CONNOR and WILLIAM R. BROWN. } # 432.

On this day came the above-named parties hereto, by their respective attorneys; thereupon defendants, by their attorneys, present to the court their demurrer to plaintiff's petition herein. The court, having heard said demurrer read and arguments of counsel thereon, reserves its decision for a full consideration hereof.

And be it remembered that thereafter, to wit, on the 23rd day of May, A. D. 1889, that being one of the regular days of the May, 1889, term of the district court of the third judicial district of the Territory of Wyoming, sitting within and for the county of Carbon, the following proceedings were had, to wit:

AMANDA W. FRANCE
vs.
JOHN W. CONNOR and WILLIAM R. BROWN. } # 432.

On this day it is ordered by the court that defendants' demurrer to plaintiff's petition hereinbefore presented and argued be, and the same is hereby, sustained; to which order of the court plaintiff, by counsel, excepts.

29 And be it remembered that thereafter, to wit, on the 24th day of October, A. D. 1889, the same being one of the regular days of the October, A. D. 1889, term of the district court of the third judicial district of the Territory of Wyoming, sitting within and for the county of Carbon, the following proceedings were had, to wit:

AMANDA W. FRANCE
vs.
JOHN W. CONNOR and WILLIAM R. BROWN. } # 432.

On this day came the plaintiff herein, by her attorney, and moves the court now here to set aside and vacate the order striking the above-entitled action from the docket hereinbefore entered on the 15th day of October, A. D. 1889, and to reinstate said cause. The court, being now fully advised in relation thereto, orders that said motion be sustained, and that this cause be placed on the trial docket for the present term of this court; and this cause having been heretofore heard on the demurrer to plaintiff's petition and said demurrer having been sustained, and the plaintiff failing and not asking leave to plead further, it is now considered by the court that the defendants go hence without day and recover from the plaintiff

their costs herein expended; to which judgment plaintiff, by counsel, excepts.

30 TERRITORY OF WYOMING, } ss:
County of Carbon, }

I, John Stone, clerk of the district court of the third judicial district of the Territory of Wyoming, do hereby certify that the foregoing is a true, perfect, and complete transcript of all the papers, proceedings, pleadings, and journal entries on file and had or taken or entered in the case of Amanda W. France against John W. Connor and William R. Brown as appears of record and papers kept and on file in my office.

[SEAL.] Witness my hand and seal of said court this 24th day of October, A. D. 1889.

JOHN STONE, *Clerk,*
By CHAS. E. CHRISMAN, *Deputy.*

Which said petition in error is endorsed on the back as follows, to wit:

Doc. 2, No. 70. Supreme court, Wyoming Territory. Amanda W. France, pl'ff in error, *vs.* John W. Connor and William R. Brown, def'ts in error. Petition in error and transcript of proceedings. Filed Nov. 7, 1889. James R. Whitehead, clerk. Charles N. Potter, attorney for pl'ff in error.

31 And be it remembered that on the 7th day of November, A. D. 1889, the said plaintiff in error filed in the office of the clerk of said supreme court a precipe for summons in error in the following words and figures, to wit:

"In the Supreme Court of the Territory of Wyoming.

AMANDA W. FRANCE, Plaintiff in Error,
vs.
JOHN W. CONNOR and WILLIAM R. BROWN, Defendants in Error.

Precipe.

The clerk of said supreme court will please issue a summons in error in the above-entitled cause, directed to the sheriff of Laramie county, returnable according to law.

CHAS. N. POTTER,
Attorney for Plaintiff in Error."

And which said precipe for summons in error was endorsed as follows:

"Docket 2, No. 70. In the supreme court. Amanda W. France, pl'ff in error, *vs.* John W. Connor and William R. Brown, def'ts in error. Precipe for summons in error. Filed Nov. 7, 1889. James R. Whitehead, clerk. —— ——, deputy. Chas. N. Potter, att'y for pl'ff in error."

And be it remembered that heretofore, to wit, on the said 7th day of November, A. D. 1889, there was issued in said cause, out of and under the seal of the said supreme court, a summons in error in the following words and figures, to wit:

TERRITORY OF WYOMING, *ss:*

In the Supreme Court.

To the sheriff of Laramie county, Greeting:

You are hereby commanded to notify John W. Connor and William R. Brown or Corlett, Lacy & Riner, their attorneys of record, that a petition in error has been filed in the supreme court of Wyoming Territory, in the case entitled Amanda W. France, plaintiff in error, *vs.* John W. Connor and William R. Brown, defendants in error, and make due return of this writ according to law on
32 or before the 20th day of January, A. D. 1890.

Witness James R. Whitehead, clerk of the supreme court, this seventh day of November, A. D. 1889, and the seal of said supreme court.

[Seal Supreme Court, Territory of Wyoming.]

JAMES R. WHITEHEAD,
Clerk of the Supreme Court.

And upon which said summons in error was endorsed the following return and acceptance of service:

"I hereby certify that the within writ came into my possession on this 8th day of November, A. D. 1889, and I served the same at Cheyenne, Laramie county, Wyoming Territory, on the 8th day of November, A. D. 1889, by Corlett, Lacey & Riner, attorneys of record for the Territory of Wyoming, having accepted service.

Fee, $1.15.

JOHN A. MARTIN,
Sheriff of Laramie County."

Service accepted Nov. 8, 1889.

CORLETT, LACEY & RINER,
Attorneys for John W. Connor and Wm. R. Brown, Assignees of James France.

And which said summons in error was further endorsed as follows, to wit:

"Docket 2, No. 70. Amanda W. France *vs.* John W. Connor and William R. Brown. Territory of Wyoming. In the supreme court. Summons in error. Filed November 11th, 1889. J. R. Whitehead, clerk supreme court. Chas. N. Potter, att'y for plaintiff in error."

33 And that thereafter, to wit, on the tenth day of June, A. D. 1890, that being one of the regular days of the January, 1890, term of the supreme court of the then Territory, now State, of Wyoming, the following proceedings, among others, were had in said court:

"AMANDA W. L. FRANCE, Pl'ff in Error,
vs.
JOHN W. CONNOR and WM. R. BROWN, Def'ts in Error. } Doc. 2. No. 70.

Comes now the plaintiff in error herein, by C. N. Potter, her counsel, and also comes the defendants in error herein, by Mess. Corlett, Lacey & Riner, their counsel, and the plaintiff, by her counsel, moves the court for a continuance of this cause, which motion, being made orally and fully argued by counsel and duly considered by the court, is by the court sustained. It is therefore ordered by the court that this cause be, and the same is hereby, continued until the next term of this court, the chief justice not presiding or participating in this opinion or order of the court."

34 And be it remembered that on the 20th day of January, A. D. 1891, being one of the regular days of the November, 1890, term of the supreme court of Wyoming, the following proceedings, among others, were had in said court and entered of record, to wit:

"AMANDA W. FRANCE, Plaintiff in Error,
vs.
JOHN W. CONNOR and WILLIAM R. BROWN, Defendants in Error. } No. 70.

Trial of this cause will be set upon consultation with the judge of the first judicial district, who will be requested to sit in the stead of Honorable Homer Merrill, who announces himself as interested herein."

And be it remembered that on the twenty-first day of January, A. D. 1891, being one of the regular days of the November, 1890, term of the supreme court of Wyoming, the following proceedings, among others, were had in said court and entered of record, to wit:

"AMANDA W. FRANCE, Plaintiff in Error,
vs.
JOHN W. CONNOR and WILLIAM R. BROWN, Defendants in Error. } No. 70.

Whereas the Honorable Homer Merrill, one of the justices of this court, announces himself as interested in this cause, and it appearing to the court that he is disqualified and unable to sit for such reason, it is therefore ordered by the remaining justices that the Honorable Richard H. Scott, judge of the first judicial district of the State of Wyoming, be called in to sit with the other justices of this court on the hearing of said cause, which is set for Saturday, the twenty-fourth day of January, A. D. 1891, at 10 a. m."

And be it remembered that on the twenty-fourth day of January, A. D. 1891, being one of the regular days of the November, 1890, term of the supreme court of Wyoming, the following proceedings, among others, were had in said court and entered of record, to wit:

"AMANDA W. FRANCE, Plaintiff in Error,
vs.
JOHN W. CONNOR and WILLIAM R. BROWN, Defendants in Error. } No. 70.

Counsel for the respective parties being present, the argument of this cause was proceeded with, and the same not being concluded at the hour of 5 p. m., it was ordered that this court adjourn to Monday, January 26th, 1891, at the hour of 10 o'clock a. m. of that day."

35 And be it remembered that on the twenty-sixth day of January, A. D. 1891, being one of the regular days of the November, 1890, term of the supreme court of Wyoming, the following proceedings, among others, were had in said court and entered of record, to wit:

"AMANDA W. FRANCE, Plaintiff in Error,
vs.
JOHN W. CONNOR and WILLIAM R. BROWN, Defendants in Error. } No. 70.

The argument in this cause is now resumed, and it being concluded at the hour of 11 a. m., is taken under advisement by the court."

And be it remembered that on the first day of June, A. D. 1891, being one of the regular days of the April, 1891, term of the supreme court of Wyoming, the said court handed down and there was filed herein the following opinion in the words and figures following, to wit:

36 In the Supreme Court of the State of Wyoming (June 1, 1891).

AMANDA W. FRANCE, Plaintiff in Error,
vs.
JOHN W. CONNOR and WILLIAM R. BROWN, Defendants in Error.

C. N. Patter for plaintiff in error, John W. Lacey and Brown and Arnold for defendants in error.

Opinion of the Court.

GROESBECK, *C. J.:*

The following facts appear in the petition of the plaintiff in error: She was married to James France February 7, 1887, and he died intestate August 21st, 1888, leaving her, his widow, surviving him. March 16, 1888, James France, being then insolvent, executed and delivered to the defendants in error a deed of assignment, under the laws of Wyoming Territory, of all his property not exempt from execution, including realty of considerable value, situate in the county of Carbon, for the benefit of all of his creditors. The assignees have since been in the possession of all of the

assigned property. Mrs. France did not join in the deed of assignment and brought suit in the district court of Carbon county for the admeasurement and assignment of dower in the realty so assigned and for an accounting of all the rents, issues, and profits thereof since the death of her husband, to the end that she may have her dower rights therein, which she claims. The assignees, defendants in error, demurred to this petition on the grounds
37 that the court was without jurisdiction to grant the relief prayed for and because the petition does not state facts sufficient to constitute a cause of action. The demurrer was taken under advisement by said district court, the Honorable Samuel T. Corn, then associate justice of the supreme court of Wyoming Territory, presiding as judge of said court, and the demurrer was thereafter sustained by the district court. Mrs. France excepted thereto, and, failing and not desiring to plead further, judgment was rendered for the defendants in error, and she prosecuted proceedings in error in this court.

The plaintiff in error in the court below and in this court and in the brief and argument of her counsel asserted her right to dower under section 18 of an act of the Congress of the United States, known as the "Edmunds-Tucker act," entitled "An act to amend an act entitled 'An act to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States in reference to bigamy, and for other purposes,' approved March twenty-second, eighteen hundred and eighty-two."

Dower and tenancy by the courtesy were abolished at a very early day in the Territory of Wyoming by an act entitled "An act regulating descent and distribution of property," approved December 10, 1869, which was incorporated, with slight amendments, in the Revised Statutes of Wyoming for 1887 and is found in section 2221 thereof, in the following language:

"Dower and the tenancy by the courtesy are abolished, and neither husband nor wife shall have any share in the estate of the other save as herein provided." It is by the terms of section 18 of this Edmunds-Tucker act that plaintiff is entitled to dower, if at all, as it is conceded that she is not entitled thereto under any law
38 of the Territory of Wyoming. Although not mentioned in the brief of counsel, we deem it proper to state that the Legislative Assembly of Wyoming passed a statute approved March 9, 1888, which, among other things, made provision for the release of dower and all rights of the wife in the lands of the husband, mainly in cases of homestead, and providing a simple method of procedure where the wife is insane. The statute does not confer or recognize the right of dower, but, on the contrary, expressly disclaims such a purpose. The closing section of the statute is as follows: "Nothing herein contained shall of itself be deemed to confer upon any married woman any dower interest in the lands of the husband, but whenever and so long as any such right of dower exists by virtue of the laws of Congress or otherwise the same may be relinquished, released, or barred, as herein provided." Sess. Laws of Wyoming 1888, c. 75, p. 167. It is necessary, therefore, to review the history of the legis-

lation of Congress germane to the general object and purview of the act to ascertain the mischief sought to be remedied by this legislation and the reasons that impelled Congress to enact the various laws to check, restrain, and punish the practice of polygamy. The first attempt of Congress in this direction was the enactment of the anti-polygamy act entitled "An act to prevent the practice of polygamy in the Territories of the United States and other places and disapproving and annulling certain acts of the Legislative Assembly of the Territory of Utah," approved July 1, 1862. This act has three sections. The first defines the offense of bigamy and prescribes the penalty therefor, and by the express terms of the section the law applies to the Territories of the United States and to any other place over which the United States have exclusive jurisdiction. This section became section 5352 of the Revised Statutes of the United States. Section 2 annuls an ordinance of the provisional government of the so-called "State of Deseret" incorporating the Church of Jesus Christ of the Latter-Day Saints, validated by an act of
39 the Legislative Assembly of the Territory of Utah and all other acts and parts of acts of said Legislative Assembly which "establish, support, and maintain, shield, or countenance polygamy." Section 3 limits the value of real property to be held in any Territory of the United States by any religious corporation or association to the sum of $50,000. This last section became section 1890 of the Revised Statutes of the United States. This anti-polygamy act remained in force as originally enacted for nearly twenty years, when it was amended by what is known as the "Edmunds law," entitled "An act to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States in reference to bygamy, and for other purposes," approved March 22, 1882. (22 U. S. St. at Large, ch. 47, p. 30.) This act contains nine sections, but only the first and second sections are amendatory of the original act. Section 1 amends section 1 of the anti-polygamy act (section 5352, R. S. U. S), and section 2 has a saving clause as to offenses committed prior to the passage of this amendatory act. The other sections, except the last, which is numbered nine, relate to the defining of the offense of unlawful cohabitation, the method of procedure in the courts in the prosecution of the cognate offenses of polygamy and unlawful cohabitation, the qualification of jurors, a provision for the amnesty of offenders convicted under prior laws, legitimates the issue of Mormon marriages born prior to January 1, 1883, disqualifies polygamists and bigamists as voters, and makes them ineligible to hold office or any place of public trust. Section 9 provides for a board or commission to be appointed by the President of the United States, by and with the advice and consent of the Senate, to have control and charge of elections and registration in Utah, etc.

The next law on this subject is found in the act which
40 took effect, without the signature of the President, March 3, 1887, which is familiarly known as the "Edmunds-Tucker act," the title to which is quoted *supra*. It has twenty-seven sections, and the subject-matter of the act is much broader than the

title. It is not wholly amendatory — the Edmunds law of March 22, 1882, but contains many other matters foreign to the object and scope of the act as expressed in the title, which does not contain the clause "for other purposes," which is inserted therein only as a part of the title of the Edmunds law. The act is a mosaic of legislation, and its loose arrangement is a powerful argument in favor of the wise provision of the constitutions of many States which does not appear in the Federal Constitution, that no bill except general appropriation bills and bills for the codification and general revision of the laws shall be passed containing more than one subject, which shall be clearly expressed in the title. Grouping sections in some sort of system, it will be observed that 16 sections (6, 7, 8, 11, 12, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, and 27), by the express terms of each respectively, apply only to the Territory of Utah. In the above-indicated order they repeal laws of Utah providing that prosecutions for adultery can only be commenced on the complaint of the husband or wife; enlarge the powers and jurisdiction of the court commissioners appointed by the supreme and district courts of Utah; enlarge the powers of the United States marshal for Utah and his deputies; repeal laws of Utah giving illegitimate children capacity to inherit from the father; repeal laws of Utah conferring jurisdiction on probate courts or judges thereof other than matters of administration of the estates of decedents and the guardianship of persons and property of infants and those of unsound mind; repeal laws of Utah incorporating the Perpetual Emigration Fund Company; dis-
41 solve that corporation and prohibit the reincorporation thereof or of associations of like character; require the Attorney General of the United States to institute proceedings in the supreme court of Utah to carry into effect the provisions of section fifteen and to dispose of the property of said corporation mentioned therein; repeal the act of the legislative assembly of Utah, and of the so-called "State of Deseret," incorporating, continuing, or providing for the Mormon church; dis-olve said corporation and require the Attorney General to institute proceedings to wind up its affairs, etc.; provide for the appointment of judges of the probate courts in Utah by the President, by and with the advice and consent of the Senate, and annul laws of Utah providing for the election of such judges; repeal laws of Utah authorizing women to vote and prohibit their voting in that Territory; repeal laws of Utah providing for the numbering and identifying of the ballots of electors at any election; provide for the redistricting of Utah and the apportionment of representation in the territorial legislature, and that none but citizens of the United States shall vote at any election in said Territory; continue in force the provisions of section 9 of the "Edmunds law" of March 22, 1882, referring to the registration of voters and the elections in Utah until by suitable legislation of the legislative assembly thereof the provisions of the law are re-enacted and approved by Co-gress; prescribe qualifications for voting and holding office in Utah, and a test oath for voters, officers, and jurors therein; abolish the office of territorial superintendent of district schools created by the laws of Utah and require the supreme court of that Territory to appoint a commis-

sioner of schools with the same powers and duties exercised by such superintendent and with additional powers and duties prescribed by the act, and suspend the laws of Utah for the election and
42 appointment for such officer last named, and repeal the militia laws of Utah. Six sections of the act (1, 2, 3, 4, 10, and 18, the dower section) do not express where they apply in direct terms, but it may be easily gathered from the context of the original and amendatory acts that all but the last section named, 18, are applicable to all of the Territories. Sections 3, 4, and 5 enlarge the number of offenses that may be prosecuted and punished, and were enacted, doubtless, to shut off not only polygamy where proof might be difficult to obtain, but all acts of unlawful sexual intercourse, as these sections define cognate offenses of adultery, incest, and fornication and prescribe penalties therefor. Section 10 is in the nature of a proviso to section 9 and saves the right to introduce other legal proof of marriages than the record thereof provided in said section 9 and made *prima facie* of the facts therein stated, while sections 1 and 2, respectively, make the husband or the wife of the accused a competent witness, under certain restrictions, in all prosecutions for bigamy, polygamy, or unlawful cohabitation, and provide for a summary method for securing the attendance of witnesses in such prosecutions. Four sections of the act (9, 13, 14, and 26), by the express terms of each, respectively, apply in any or all of the Territories. They provide for the certifying of all marriages solemnized in the Territories and for the record thereof; for proceedings to forfeit the property of religious corporations or associations obtained or held in excess of the limit of $50,000, and in violation of section three of the anti-polygamy act of July 1, 1862 (R. S. U. S., sec. 1890), and for the escheat thereof; for the summary process to compel the production of all books, papers, documents, and records of such corporations or associations, and provide for the appointment of trustees to hold the real property of such religious corporations and the
43 manner of such appointment. Nine sections of the act (6, 11, 12, 15, 17, 19, 20, 21, and 27) repeal or annul in express terms laws of Utah on subjects named therein, showing conclusively that Congress had full knowledge of the terms of the laws of Utah deemed obnoxious and by it disapproved and annul-ed. Section 11 of the act annuls and disapproves laws of Utah which provide for or recognize the capacity of illegitimate children to inherit or to be entitled to any distributive share in the estate of the father, saving the rights of all illegitimate children legitimated by section 7 of the Edmunds act of March 22, 1882, and of illegit-mate children born 12 months after the passage of the act (the Edmunds-Tucker law). No section of the act modifies or changes in any way, by express terms or by any inference, the laws of descent or distribution of any Territory except that of Utah.

This leaves for consideration the dower section, numbered 18, which does not state where it applies. It was undoubtedly borrowed from the laws of New York relating to the dower of widows, as appears in the 17th Congressional Record, 49th Cong., vol. 17, part 1, page 457 (proceedings of the Senate of January 6, 1886).

Senator Edmunds, the author of the Senate bill, recognized this source of the dower section, as he stated on moving certain amendments thereto that paragraph *a* of said section (then section 25 of the bill—Senate bill 10) was, he believed, "taken verbally from the laws of the State of New York, which are very much like the laws of other States." A comparison of the New York statute with section 18 of the Edmunds-Tucker act discloses but few changes were ingrafted on the New York law. The words "unless she shall have lawfully released her right thereto," in paragraph *a* of section 18, were added as a measure of precaution, and where reference is made in the body of the section to a mortgage there is added, "or conveyance in the nature of a mortgage," and where the
44 word mortgagee is found in like situations the words "or grantee in such conveyance" are added; but notwithstanding these modifications, and another which we shall presently examine, it is apparent that the structure of this dower section is based upon the New York statute, of which it is almost an exact copy. In paragraph *b* of the dower section the words "this State," as they appear in the New York statute, are stricken out, and the words "the Territory" inserted in lieu thereof. As we think that this paragraph, which is the only guide or reference in this disputed section to the locality where the same applies, will materially aid in the construction of the entire section, we quote the paragraph in full: "(*b*) The widow of any alien who, at the time of his death, shall be entitled by law to hold any real estate if she be an inhabitant of the Territory ('this State,' in the New York statute) at the time of such death shall be entitled to dower of such estate in the same manner as if such alien had been a native citizen." The borrowed law applied to but one jurisdiction, "this State." Is it not plain to be seen that the one who drafted the bill intended by striking out these words and inserting in their place "the Territory" that the section should apply to but one jurisdiction, "the Territory" he had in his mind at the time? Contrasted with the language employed in theree acts of Congress—the anti-polygamy law, the Edmunds and the Edmunds-Tucker acts—it appears that when Congress legislated for all of the Territories it did so in the act in express terms, and it so spoke when legislating for some particular Territory. This has been the custom of Congress in its acts relating to all or any of the Territories, not only in the acts we have been considering, but in all of its legislation of many years concerning the Territories. So it was held by the supreme court of the District of Columbia in the case of United States *v.* Millard H. Crawford, 12 Cent. Rep., 404, that these acts which we are considering, although containing the language "in a Ter-
45 ritory of the United States or other place over which the United States have exclusive jurisdiction," did not apply to the District of Columbia, and that a prosecution for fornication under section 5 under the Edmunds-Tucker act could not be maintained under the law in said jurisdiction, inasmuch as the history of legislation in reference to that District shows that where Congress intended to legislate therefor its habit has been to do so in express

terms, and this decision was rendered in the face of the fact that Congress has exclusive jurisdiction over the said District. When Congress limits the operation of any law to a particular district or districts it has invariably, we believe, pointed out specifically the locality or localities where the legistation is meant to apply. In all such cases we think that the presumption would be that any given locality is not within the operation of the statute unless clearly made so upon the face of the act itself. This seems to be the theory of the case just quoted. It is urged that these words, "the Territory," should be so construed as to mean the Territory in which the real estate is situate and not the Territory of Utah; but we find in the act that where such words are necessary to make clear the meaning they were carefully inserted. In section 13 of this Edmunds-Tucker act it is made the duty of the Attorney General of the United States to institute proceedings to forfeit and escheat to the United States the property of corporations and associations held in violence of the acts of Congress, and this section also provides that "all such property so forfeited and escheated to the United States shall be disposed of by the Secretary of the Interior and the proceeds thereof applied to the use and benefit of the common schools in the Territory in which such property may be." Such care exercised in one portion of the act is striking and significant, as it shows the intent and purpose of Congress in harmony with its habit, as
46 when a provision is made for the benefit of or applicable to any or all of the Territories it is so stated or may be easily gathered from its enactment. It is further argued, with considerable ingenuity, that this dower section is separately written, like other parts of the bill, and that the subjects embraced in the different sections were strung together without logical sequence or any proper classification of subjects, and that the fact that Utah and no other Territory is specifically mentioned in the preceeding section, 17, wherein the incorporation of the Mormon church is dis-olved and proceedings provided for the winding up of its affairs in the courts of Utah, and that section 19, following, providing for the appointment by the President, by and with the advice and consent of the Senate, of all judges of the probate courts in Utah, and disapproving and annulling all laws of that Territory which require the election of such judges, has no bearing in the construction of this section 18. This view we do not entertain, as we believe that it is not in harmony with the principles governing the legal construction of an act. Not only is each portion of an act to be construed with every other portion, but the entire act is to be construed in connection with all other acts in *pari materia*. The division of an act of Congress into sections does not interfere with this principle of construction.

The division of legislation by different sessions of Congress separated by many years does not vary the rule, nor does the division of legislation into different acts interfere with it. It is contended that the sections which do not have within themselves a limitation of their application apply "throughout the entire jurisdiction over which Congress may legislate," and that sections 3, 4, and 5

of the Edmunds-Tucker act do so apply because not so limited. We have already indicated our views on that point, but we may say, further, that we do not consider it a safe rule to fol-
47 low in the construction of congressional legislation. A better reason may be found why these sections 3, 4, and 5 apply in all of the Territories (not throughout the entire jurisdiction over which Congress may legislate) than the reason given in the general language of the sections. Why should each section specify the extent or limit of its application? Where a limitation is once ascertained and clearly defined what necessity is there for repeating it in legislation upon the same subject until the limitation is changed, whether the legislation is all in the same section or in the same act or of the same year or by the same Congress or whether it is in many sections or in many acts of many years by many Congresses? The limitation may be expressed over and over again, as it often is, but is this necessary? Sections 1 and 2 of the act, general in terms, are doubtless applicable in all of the Territories because they make specific provisions in certain proceedings, examinations, and prosecutions marked out in the act to which the Edmunds-Tucker act is amendatory and which are applicable in all of the Territories. Sections 3, 4, and 5 apply to the same territorial extent because of the natural and logical connection of the language as well as of the subject-matter and because they define and prescribe the penalty for cognate offenses to those of polygamy and unlawful cohabitation defined in the last preceding act. There is nothing to indicate an intention to make any change in the jurisdiction where these parts of the act apply. The numbers of the sections interpolated are insignificant and do not of themselves change the meaning of the significant words of the section or affect them in any way. This division of a law into sections is purely arbitrary and is controlled by no rules of grammar, logic, or law, and is made merely for convenience of reference, and is no
48 more a part of the legislation than milestones are a part of the highway. So of section 18, the dower section. The language is not to be severed from its actual and natural connection with what follows and what preceed-s it. If the words "sec. 18" had been omitted and had not been inserted until the point where "sec. 19" is placed there would have been no question raised. What effect can these words, "sec. 18," have upon the meaning of the effective language of the act? This brings us to the consideration of the relative words, "the Territory," and we must ascertain what Territory is meant. All language is relative to and dependent upon other language employed in the same and immediate connection. The expression quoted is relative in a more specific and in a grammatical sense, and the rule for our guidance in this particular is not a doubtful one. The authorities appear to be numerous and harmonious to the effect that "relative and qualifying words and phrases, grammatically and legally, where no contrary intention appears, refer solely to the last antecedent." Suth. St. Const., sec. 267, and the authorities there cited. The last antecedent Territory is Utah. Why do the relative words "the Terri-

tory" refer to the last antecedent? Where does the contrary intention appear? In the original bill, as it passed the Senate, the dower section was the last section of the bill and followed section 24 thereof, which declares vacant the office of the territorial superintendent of district schools, created by the laws of Utah, and provides that the supreme court of the Territory shall appoint his successor, etc. This provision, somewhat modified, has been incorporated in section 25 of the act. In the House bill, which was passed as a substitute for the Senate bill, the dower section was numbered 22 and followed a section annulling and declaring void all laws passed by the General Assembly of Deseret or by the Legislative Assembly of Utah granting and confirming any water, timber, or herd rights on any part of the public domain or any special privilege therein to any person or any civil or ecclesiastical corporation or association, etc., which was eliminated from the bill by the conference committee and preceded a section relating to the formation of the new election districts in Utah and providing for the new apportionment for members of the Utah legislature. *Vide* Congressional Record, vol. 18, pt. 1, pp. 581, 583. Hence it appears that in every arrangement of the bill and its subdivision into sections, in all of the mutations of legislature, this dower section either followed a section or was imbedded between sections in terms applying only to the Territory of Utah.

But we may decide this question upon a broader grounds that appear to us to be conclusive. At the time of the passage of the Edmunds-Tucker law there were eight Territories of the United States, viz., Arizona, Dakota, Idaho, Montana, New Mexico, Utah, Washington, and Wyoming. Montana alone had dower, and it had been abolished by statutes that had stood for many years in Dakota, Idaho, Utah, and Wyoming. Comp. Laws Utah, 1876, sec. 1022; found in section 2530, Comp. Laws, 1888; Comp. Laws Dak., 1887, sec. 3402; Rev. St. Idaho, ch. 3, tit. 2, secs. 2493–2512, revision 1887; Rev. St. Wyo., 1887, sec. 2221. In Arizona, Idaho, New Mexico, and Washington the law of community property prevailed, to which the Pacific States and Territories have clung with so much persistency. It came in with the law of France and Spain, and is a legacy of the Louisiana purchase and the Mexican accession. The central or fundamental idea of the community system is that marriage creates a partnership in property between husband and wife, and that all property resulting from the labor of both or either of them, except by gift, devise, bequest, or descent, called "acquets" or "acquest property," inures to the benefit of both of them; and, though community property has not all the incidents of partnership property, it has many of them, and is commonly spoken of as partnership property. With some changes, such as provision for the segregation of the separate property of either spouse from the community property and other slight modifications, this law is not only in force in these jurisdictions along the Pacific coast, but has found deep root in the legislation of the States of Texas and Louisiana. The system is a child of the civil law, and is not recognized by the common law.

In Washington it seems that the husband cannot incumber or sell the community real estate unless the wife join in the deed or other instrument of conveyance by which it is conveyed or incumbered, and upon the death of the husband or wife the survivor has one-half of the community property, freed from all but community debts, and the other half is subject to the testamentary disposition of the husband and wife, subject to the community debts. In Idaho the husband has the management and control of the community property, with the like absolute power of disposition (other than testamentary) as he has of his separate property or estate. By such disposition he does not extend to the homestead occupied or used by the husband or wife as a residence. In Arizona the husband only may dispose of the community property during coverture. In all of these seven Territories where dower was abolished or where community property was substituted for it the most liberal provisions exist as to homestead rights, and the consent of the wife must be had to sell or incumber the homestead, the value of which ranges from $1,000.00 in Washington to $5,000.00 in Idaho. The widow is given a large share of her husband's estate where he dies intestate. Where there are a surviving child or children she is
51 given a moiety of the estate in some of these jurisdictions; in others, one-third; and in the event of no issue surviving the deceased husband she has even a larger share of the estate, so that in these Territories she was dealt with for more graciously than at common law. R. S. Arizona, 1887, secs. 2100–2102, 1460; Compiled Laws New Mexico, 1884, secs. 1411, 1414, and 1422; C. L. Dakota, 1887, secs. 2594, 3401, 3402; Code Washington, 1881, secs. 342–348, 2400–2417, and Laws 1887, '88; R. S. Idaho, secs. 2493–2512, pp. 363–366, 606–609, 645–649; C. L. Utah, 1876, secs. 700–732.

In Wyoming the homestead can only be sold or incumbered with the consent of the wife, she being required to join in the mortgage or deed, and the right of homestead is to the extent of $1,500, the proceeds upon the sale thereof being exempt from execution or attachment as well as the homestead itself. The homestead, with a considerable amount of property of the decedent, is set apart to the widow, and does not pass into administration. If the husband die intestate the widow receives one-half of the estate if there be a surviving child or children or descendant thereof, and if there be none all of it if the sum does not exceed in value $10,000, and if above that amount she receives three-fourths of the estate and the other heirs named in the act one-fourth. Rev. St. Wyo., secs. 2063, 2064, 2122, 2780, 2789. It may be true that in Wyoming and probably in some of the other Territories existing at the time of the passage of the Edmunds-Tucker law a profligate husband might dispose of, by will, his entire property except the homestead, and thus leave the widow without means; but such could not be the case in Washington or Idaho and probably in other of the seven Territories named. There the right of community property vesting in the wife could not be the subject of testamentary disposition. It is incredible that Congress, knowing all these laws, could have intended to confer a

lesser right on married women in those Territories which
52 provided more generously for them than the Edmunds-Tucker law. Its anxiety was to protect the first or lawful wife of Mormon or plural marriages, and this appears plainly in the report of the conference committee of the Senate and the House on the various bills, as a paragraph added to the dower section was stricken from the act, and this provided that the term "lawful wife" referred to in the section as it now stands should be held to mean in all cases of Mormon or plural marriages the first wife, and that such wife only should be entitled to dower, under the act, on the death of her husband. The reason for striking this clause from the bill was stated to be that it was best to leave that matter to the courts. Cong. *Cong.* Record, 49th Cong., vol. 18, pt. 1, p. 583, and *ibid*, pt. 2, p. 1879. Dower was conferred by this act to protect the first wife by offering to her and her children privileges which are denied to them under the laws of Utah and to prevent the husband there from making such testamentary disposition as to exclude the first wife and the legitimate children or to force her and her children to share the property with the other wives and children of a polygamous marriage.

The law of Utah on this subject of distribution of and the right of succession to the estates of deceased persons at the time of the passage of the Edmunds-Tucker law was as follows:

"SECTION 25. Illegitimate children and their mothers inherit in like manner (as legitimate) from the father, whether acknowledged by him or not, provided it shall be made to appear to the satisfaction of the court that he was the father of such illegitimate child or children." Comp. Laws of Utah, 1876, sec. 677.

This act was declared valid and binding, and an illegitimate child was allowed to inherit his share of his deceased father's estate by the decision of the Supreme Court of the United States in the
53 case of Cope *v.* Cope, 137 U. S., 682, it being held that the Edmunds-Tucker law expressly saved such rights by the proviso of the 11th section thereof. There was no such act in any other Territory, and it seems clear to us that this dower section was aimed solely at the condition of affairs existing in Utah. Congress did not surely, while legislating to protect the lawful wife in Utah, intend to supplant beneficent provisions of the law of those Territories which with a free hand bestowed the right of the community property upon the lawful wife. It did not intend to strike down any of the rights which married women possessed there, and to grant this to be true is to concede that the law does not apply and never intended to apply to Wyoming, as it must apply to all of the Territories or to Utah alone. The abolition of dower in the Territories where the law of community property did not prevail was probably caused by a desire to remove all restraint from alienation, except in the Territory of Utah, where illegitimate children and their mothers were allowed to inherit and where the practice of plural marriages was covertly upheld and boldly recognized in the statutes.

The Wyoming law was borrowed from Colorado, where it was

found on the statute books to-day, and was followed by a more valuable gift than the right abrogated, as the innovation was condoned by granting to the widow a larger share of the estate of her intestate husband than was bestowed by the common law and by enlarging her rights as a *feme covert*, so circumscribed by the common law.

If the position be taken that the act conferring dower did not repeal the laws relating to the community property where they had sway, it will readily be seen that such legislation would have been a fruitful source of litigation, an absurd attempt to ingraft the dower right of the common law upon the unfriendly and alien root of the civil law, and to give to the widow a disproportionate
54 share of her husband's realty—a position that need but to be stated to show its absurdity. Congress must be presumed to have known the status of all this diverse legislation in all of these jurisdictions at the time of the enactment of the Edmunds-Tucker law. A statute is always construed with reference to the intent of the legislative power, and to arrive at that intent the courts always first undertake to ascertain the mischief which the legislature had in view and which they desired to correct.

An examination of all these statutes relating to the practice of polygamy shows that the purpose of Congress was to destroy it in the Territory of Utah, where it was chiefly intrenched. U. S. *v.* Millard H. Crawford, *supra*. It did not intend to upset the laws of seven jurisdictions where polygamy had not gained such a foothold or to throw into them an apple of discord to be fought over in the courts. It had widely provided in its legislation regarding certain of the Territories that the laws passed therein should be submitted to Congress, and, if disapproved, the same should be null and void. R. S. U. S., sec. 1850. It provided, further, that in all of the Territories a copy of the laws and journals of the Legislative Assembly, within thirty days after the end of each session thereof, should be transmitted to the President, and that two copies of the laws for the use of Congress should within the same period be forwarded to the presiding officer of each house of Congress. R. S. U. S., sec. 1844. The object of these provisions was to keep the executive and legislative departments of the Federal Government constantly apprised of all territorial legislation, to the end that if the same or any part thereof was objectionable to Congress it might be repealed or amended. Clinton *et al. v.* Englebrecht, 13 Wall., 446; Miners' Bank of Dubuque *v.* State of Iowa, 12 How., 8. An inspection of the congressional debates upon the bill which culminated in the Edmunds-Tucker act discloses that none of the laws of the
55 different Territories upon the right of married women, community property, or succession or distribution of the estates of decedents were discussed or even mentioned save, perhaps, as to Utah. There was not the slightest indication of any dissatisfaction in the minds of the national legislators, some of whom were able jurists, with the laws of any Territory upon these subjects except as to the laws of Utah. One may look in vain n the discussions upon the bill for any design, intent, or purpose to

annul or modify any law of any Territory except Utah in these respects. The action of Congress on the bill is properly denominated in the Congressional Record "polygamy and affairs in Utah," and the course and tenor of all the debates plainly indicate that these subjects alone received the attention of Congress in the two years of the gestation of this statute. Moreover, Congress seems to have been extremely anxious, even in the case of legislation in Utah, to preserve the rights of illegitimate children there, for it enacted as a proviso at the end of section 11 of the act that said "section shall not apply to any illegitimate children born within twelve months after the passage of this act nor to any children made legitimate by the seventh section of the act of March 22, 1882." This solicitude of the law-making power was recognized in a remarkably clear and able opinion of Mr. Justice Brown in the case of Cope *v.* Cope, *supra*, which may well be quoted as an authority in favor of many of the propositions we have laid down herein. Such tender solicitude as to existing rights which this act breathes concerning "affairs of Utah" shows the disposition of Congress had in the passage of this act, and it certainly ought to have had the same parental regard for other communities which had been planted with so much care on the frontier. The whole current of congressional legislation, ever since Territories have been created, concerning them
56 and their internal affairs, has been to disapprove and annul laws objectionable and displeasing to Congress by express terms and not by implication; and the same course is pursued in the act before us. Why should such care be exercised in regard to Utah and not to other Territories? It seems clear to us that none of the laws of the Territories other than Utah having been disapproved or annuled on the subjects of dower, community property, or succession, that Congress never intended to disapprove and annul them. To hold otherwise is to stretch the rules of construction to an unreasonable length and to be blind and deaf to the history of all congressional legislation concerning the Territories. Nay, more; it is to say that Congress had set aside without reason and by inference and implication the great right of home rule, of dealing with rightful "subjects of legislation" vested in territorial legislatures and only withdrawn in extreme cases.

We cannot extend the application of this dower section to embrace this jurisdiction in common with others without being against reason and precedent. It is true that the supreme court of the State of Montana, in the case of Chadwick *et al. v.* Tatem *et al.*, 23 Pac. Reporter, 729, held that the Edmunds-Tucker act conferred dower in the Territory of Montana and in other Territories, but the learned counsel for the plaintiff in error, with commendable frankness, admitted that he had learned upon inquiry that that point had not been raised in the brief of counsel or argued before that court. With all due deference to the learned judge who delivered the opinion of the court in that case, we think that an examination of the opinion will show that such a statement was not necessary to the decision of the question, as the court held that the law of Montana conferring dower had not been repealed by the codification of the

statutes of that Territory, and because it appears that the inchoate right of dower had become consummate long before the pas-
57 sage and taking effect of the Edmunds-Tucker act.

It has been held in a recent case before the supreme court of the United States that in all cases of ambiguity the contemporaneous construction not only of the courts, but of the departments and even of officials whose duty it is to carry the law into effect, is controlling. Schell's Ex'rs *v.* Fauche, 138 U. S., 562; 11 Sup. C't Rep., 376. In the opinion of the court a case (Staurt *v.* Laird) is cited from 1 Cranch, 299, 309, where it was held that a practical construction of the Constitution of the United States that the justices of the Supreme Court had a right to sit as circuit judges, although not appointed as such, was not open to the objection. Says the court: "It is sufficient to observe that practice and acquies-ence under it for a period of several years, commencing with the organization of the judicial system, affords an irresistable answer and has indeed fixed the construction. It is a contemporary interpertation of the most forcible nature. This practical exposition is too strong and obstinate to be shaken or controlled." In the case of Clinton *v.* Englebrecht, 13 Wall., 446, *supra*, in passing upon the question of following in the Federal courts the laws of the Territory wherein the same are held relating to the empaneling of jurors, the court says: "This uniformity of construction by so many territorial legislatures of the organic acts in relation to their legislative authority, especially when taken in connection with the fact that none of these jury laws have been disapproved by Congress, though any of them would be annulled by such disapproval, confirms the opinion, warranted by the plain language of the organic act itself, that the whole subject-matter of jurors in the Territories is committed to the territorial regulation." *Vide* Martin *v.* Hunter, 1 Wheat., 304; Cohens *v.* Virginia, 6 Wheat., 264; Cooley *v.* Port-Wardens, 12 How., 299;
58 Lithographic Co. *v.* Sarony, 111 U. S., 53; The Laura, 114 U. S., 411; 5 Sup. C't Rep., 881 (Pollock *v.* The Laura). The construction of the act—the Edmunds-Tucker law—in relation to the application of the dower section thereof to the Territories by jurists and legislators of the Territories affected ought, we think, to have a controlling effect. It is a contemporaneous construction of the highest character and falls within the decisions above cited. In Utah alone, in its compilation of 1888, is section 18—the dower section—recognized as a part of the law. There has been no legislation in the other Territories affected adjusting their statutes to this new condition of affairs, if it existed, and this omission is convincing proof that the said section is not regarded as in force of those jurisdictions. Washington has amended her community property act by providing, among other things, that the husband or wife may convey to the other his or her share of the community property, and this was done by an act approved February 2, 1888, nearly a year after the Edmunds-Tucker act took effect and while Washington was yet in its territorial condition. The compilation of Dakota, while containing its organic act and the provisions of the Revised Statutes of the United States relative to it and common to all of the

Territories, including certain sections of the Edmunds-Tucker act, does not refer to the dower section. The law of Arizona relating to the rights of married persons was submitted by the commission revising her laws, was passed by her legislature, and received the approval of her governor February 28, 1887, nine days after the Edmunds-Tucker law came into the hands of the President and when its provisions must have been known to the entire country. The laws of that Territory relating to the descent and distribution were approved March 8, 1887, five days after the taking effect of the said act of Congress. The revision of Idaho
59 went into effect after this act became a law. In all of the Territories except Utah, where the dower section probably applies, and in Montana, where dower existed at the time of the passage of the act, the utmost disregard has been manifested as to this section, which, if it were a law, would be fraught with so much interest to the people. We cannot imagine such an apathy on the part of the lawyers and laymen if the section conferred dower in these jurisdictions, and this palpable disregard of the section plainly indicates that it is not considered applicable where it has been so profoundly ignored. Taking into consideration, therefore, the internal evidences of the act itself, the history of legislation of Congress for the Territories, the legislation on the subject of polygamy, the construction of the dower section, the source from whence it was derived, the status of the laws of the different Territories at the time of the passage of the Edmunds-Tucker act, and the construction evidently put upon the disputed section, we reach the conclusion that said section 18 of said act, relating to the dower of widows, did not confer dower upon married women in the late Territory of Wyoming, and was not at any time applicable to said Territory. This cause was pending for a long time in the supreme court of the Territory, and it is important that the grave questions involved in the case should be speedily settled. The judgment of the district court of Carbon county for the defendants in error is affirmed.

Merrel, J., having been of counsel in kindred cases and announcing in open court his disqualification under the provisions of section 6 of article 5 of the constitution of this State, the Honorable Richard H. Scott, judge of the district court of judicial district No. 1, was called in by the remaining judges of this court and sat with them in the hearing of this cause.

Conoway and Scott, JJ., concur in the foregoing opinion.

60 Which said opinion is endorsed on the back thereof as follows, to wit:

Doc. 2, No. 70. Amanda W. France, plaintiff in error, *vs.* John W. Connor & William R. Brown, defendants in error. Opinion of the court. Supreme court, Wyoming. Filed Jun- 1, 1891. Richard H. Repath, clerk.

61 And be it remembered that on the first day of June, A. D. 1891, being one of the regular days of the April, 1891, term

of the supreme court of Wyoming, the following proceedings, among others, were had and entered of record, to wit:

AMANDA W. FRANCE, Plaintiff in Error,
vs.
JOHN W. CONNOR and WILLIAM R. BROWN, Defendants in Error. } No. 70.

"This cause having been fully argued by counsel on the 26th day of January, A. D. 1891, and then submitted to this court, *and* the court, being now well advised in reference thereto, finds for the defendants in error in this court, John W. Connor and William R. Brown.

It is therefore considered, ordered, and adjudged by this court that the judgment of the district court of the third judicial district, sitting within and for the county of Carbon, in the case of Amanda W. France *vs.* John W. Connor and William R. Brown, rendered on the 24th day of October, A. D. 1889, be, and the same is, in all respects affirmed; and it is further ordered and adjudged that the said defendants in error do have and recover from said plaintiff in error their costs in this proceeding in error expended, taxed at $——, for which execution is awarded; to which said ruling, order, and decision and the opinion herein rendered plaintiff in error, by counsel, now and here excepts and now *gave* notice of petition for rehearing, and that this cause will be taken on error to the Supreme Court of the United States; and said plaintiff in error is now granted sixty days within which to reduce her exceptions to writing and present them for allowance."

And be it remembered that on the 24th day of June, A. D. 1891, being one of the regular days of the April, 1891, term of the supreme court of Wyoming, the following proceedings, among others, were had in said court and entered of record, to wit:

"AMANDA W. FRANCE, Plaintiff in Error,
vs.
JOHN W. CONNOR and WILLIAM R. BROWN, Defendants in Error. } No. 70.

Comes now the plaintiff in error herein, by Charles N. Potter, her attorney, and presents to the court her motion for a rehearing, which was by the court taken under advisement."

And be it remembered that on the thirtieth day of June, A. D. 1891, being one of the regular days of the April, 1891, term of
62 the supreme court of Wyoming, the following proceedings, among others, were had in said court and entered of record, to wit:

Territories, including certain sections of the Edmunds-Tucker act, does not refer to the dower section. The law of Arizona relating to the rights of married persons was submitted by the commission revising her laws, was passed by her legislature, and received the approval of her governor February 28, 1887, nine days after the Edmunds-Tucker law came into the hands of the President and when its provisions must have been known to the entire country. The laws of that Territory relating to the descent and distribution were approved March 8, 1887, five days after the taking effect of the said act of Congress. The revision of Idaho
59 went into effect after this act became a law. In all of the Territories except Utah, where the dower section probably applies, and in Montana, where dower existed at the time of the passage of the act, the utmost disregard has been manifested as to this section, which, if it were a law, would be fraught with so much interest to the people. We cannot imagine such an apathy on the part of the lawyers and laymen if the section conferred dower in these jurisdictions, and this palpable disregard of the section plainly indicates that it is not considered applicable where it has been so profoundly ignored. Taking into consideration, therefore, the internal evidences of the act itself, the history of legislation of Congress for the Territories, the legislation on the subject of polygamy, the construction of the dower section, the source from whence it was derived, the status of the laws of the different Territories at the time of the passage of the Edmunds-Tucker act, and the construction evidently put upon the disputed section, we reach the conclusion that said section 18 of said act, relating to the dower of widows, did not confer dower upon married women in the late Territory of Wyoming, and was not at any time applicable to said Territory. This cause was pending for a long time in the supreme court of the Territory, and it is important that the grave questions involved in the case should be speedily settled. The judgment of the district court of Carbon county for the defendants in error is affirmed.

Merrel, J., having been of counsel in kindred cases and announcing in open court his disqualification under the provisions of section 6 of article 5 of the constitution of this State, the Honorable Richard H. Scott, judge of the district court of judicial district No. 1, was called in by the remaining judges of this court and sat with them in the hearing of this cause.

Conoway and Scott, JJ., concur in the foregoing opinion.

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"This cause having been fully argued by counsel on the 26th day of January, A. D. 1891, and then submitted to this court, *and* the court, being now well advised in reference thereto, finds for the defendants in error in this court, John W. Connor and William R. Brown.

It is therefore considered, ordered, and adjudged by this court that the judgment of the district court of the third judicial district, sitting within and for the county of Carbon, in the case of Amanda W. France *vs.* John W. Connor and William R. Brown, rendered on the 24th day of October, A. D. 1889, be, and the same is, in all respects affirmed; and it is further ordered and adjudged that the said defendants in error do have and recover from said plaintiff in error their costs in this proceeding in error expended, taxed at $——, for which execution is awarded; to which said ruling, order, and decision and the opinion herein rendered plaintiff in error, by counsel, now and here excepts and now *gave* notice of petition for rehearing, and that this cause will be taken on error to the Supreme Court of the United States; and said plaintiff in error is now granted sixty days within which to reduce her exceptions to writing and present them for allowance."

And be it remembered that on the 24th day of June, A. D. 1891, being one of the regular days of the April, 1891, term of the supreme court of Wyoming, the following proceedings, among others, were had in said court and entered of record, to wit:

"AMANDA W. FRANCE, Plaintiff in Error,
vs.
JOHN W. CONNOR and WILLIAM R. BROWN, Defendants in Error. } No. 70.

Comes now the plaintiff in error herein, by Charles N. Potter, her attorney, and presents to the court her motion for a rehearing, which was by the court taken under advisement."

And be it remembered that on the thirtieth day of June, A. D. 1891, being one of the regular days of the April, 1891, term of
62 the supreme court of Wyoming, the following proceedings, among others, were had in said court and entered of record, to wit:

"AMANDA W. FRANCE, Plaintiff in Error,
vs.
JOHN R. CONNOR and WILLIAM R. BROWN, Defendants in Error. } No. 70.

"The petition for rehearing of the plaintiff in error in this cause having been heretofore filed is now considered by the court, and the court, being fully advised in the premises, do now deny the same; to which plaintiff in error, by counsel, now and here excepts.

And now the plaintiff in error presents to the court her bill of exceptions herein, and asks that the same be allowed in open court; to the allowance of which the defendants in error, by their counsel, now and here object, and the court, being fully advised in the premises, doth now overrule the objection of the defendants in error; to which ruling the defendants in error now and here except, and the said bill of exceptions is now in open court allowed, signed and sealed, and ordered to be made a part of the record in this cause, but not to be spread upon the journal of this court.

The Honorable Richard H. Scott, judge of the district court of judicial district No. 1 of the State of Wyoming, who was called in to sit in the hearing of this cause under the provisions of section six of article five of the constitution of the State of Wyoming, in the place of Honorable Homer Merrill, one of the justices of this court, who was disqualified to sit therein, not being present, did not sit in the hearing and determination of the bill of exceptions in this cause allowed by the court."

And be it further remembered that heretofore, on the said 30th day of June, A. D. 1891, being one of the regular days of the April, A. D. 1891, term of the supreme court of the State of Wyoming, the plaintiff in error presented and filed in said supreme court of Wyoming the following bill of exceptions herein in the words and figures following, to wit:

63 In the Supreme Court of the State of Wyoming.

AMANDA W. FRANCE, Plaintiff in Error,
vs.
JOHN W. CONNOR and WILLIAM R. BROWN, Defendants in Error.

Bill of Exceptions.

Be it remembered that on the first day of June, A. D. 1891, at the April term, 1891, of the said supreme court of the State of Wyoming, this cause having been theretofore argued and submitted to the court on the petition in error and on oral arguments and briefs of the parties, the court rendered judgment affirming the judgment of the court below, sustaining the demurrer of the defendants to the petition of the plaintiff, and delivered the following opinion, to wit:

64 In the Supreme Court of the State of Wyoming (June 1, 1891).

AMANDA W. FRANCE, Plaintiff in Error,
vs.
JOHN W. CONNOR and WILLIAM R. BROWN, Defendants in Error.

C. N. Potter, for plaintiff in error; John W. Lacey and Brown & Arnold, for defendants in error.

Opinion of the Court.

GROESBECK, *C. J.:*

The following facts appear in the petition of the plaintiff in error:

She was married to James France February 7, 1887, and he died intestate August 21, 1888, leaving her, his widow, surviving him. March 16, 1888, James France, being then insolvent, executed and delivered to the defendants in error a deed of assignment, under the laws of Wyoming Territory, of all of his property not exempt from execution, including realty of considerable value, situate in the county of Carbon, for the benefit of all of his creditors. The assignees have since been in the possession of all of the assigned property. Mrs. France did not join in the deed of assignment, and brought suit in the district court of Carbon county for the admeasurement and assignment of dower in the realty so assigned, and for an accounting of all the rents, issues, and profits thereof since the death of her husband, to the end that she may have her dower rights therein, which she claims. The assignees, defendants in error, demurred to this petition, on the grounds that the court was without jurisdiction to grant the relief prayed
65 for and because the petition does not state facts sufficient to constitute a cause of action.

The demurrer was taken under advisement by said district court, the Honorable Samuel T. Corn, then associate justice of the supreme court of Wyoming Territory, presiding as judge of said court, and the demurrer was thereafter sustained by the district court. Mrs. France excepted thereto, and, failing and not desiring to plead further, judgment was rendered for the defendants in error, and she prosecutes proceedings in error in this court.

The plaintiff in error, in the court below and in this court and in the brief and argument of her counsel, asserted her right to dower under section eighteen of an act of the Congress of the United States known as the Edmunds-Tucker act, entitled "An act to amend an act entitled 'An act to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States, in reference to bigamy, and for other purposes,' approved March twenty-second, eighteen hundred and eighty-two."

Dower and tenancy by the courtesy were abolished at a very early day in the Territory of Wyoming by an act entitled "An act regulating descent and distribution of property," approved December 10,

1869, which was incorporated, with slight amendments, in the revised statutes of Wyoming for 1887, and is found in section 2221 thereof in the following language: "Dower and the tenancy by the courtesy are abolished, and neither husband nor wife shall have any share in the estate of the other save as herein provided." It is by the terms of section eighteen of this Edmunds-Tucker act that plaintiff is entitled to dower, if at all, as it is conceded that she is not entitled thereto under any law of the Territory of Wyoming. Although
66 not mentioned in the brief of counsel, we deem it proper to state that the Legislative Assembly of Wyoming passed a statute, approved March 9, 1888, which, among other things, made provision for the release of dower and all rights of the wife in the lands of the husband, mainly in cases of homestead, and providing a simple method of procedure where the wife is insane. The statute does not confer or recognize the right of dower, but, on the contrary, expressly disclaims such a purpose. The closing section of the statute is as follows: "Nothing herein contained shall of itself be deemed to confer upon any married woman any dower interest in the lands of the husband, but whenever and so long as any such right of dower exists by virtue of the laws of Congress or otherwise the same may be relinquished, released, or barred, as herein provided." Session Laws of Wyoming, 1888, chapter 75, page 167.

It is necessary, therefore, to review the history of the legislation of Congress germane to the general object and purview of the act to ascertain the mischief sought to be remedied by this legislation and the reasons that impelled Congress to enact the various laws to check, restrain, and punish the act of polygamy. The first attempt of Congress in this direction was the enactment of the anti-polygamy act, entitled "An act to prevent the practice of polygamy in the Territories of the United States and other places and disapproving and annulling certain acts of the Legislative Assembly of the Territory of Utah," approved July 1, 1862. This act has three sections. The first defines the offense of bigamy and prescribes the penalty therefor, and, by the express terms of the section, the law applies to the Territories of the United States and to any other place over which the United States have exclusive jurisdiction. This
67 section became section 5352 of the Revised Statutes of the United States. Section two annuls an ordinance of the provisional government of the so-called State of Deseret, incorporating the Church of Jesus Christ of Latter-Day Saints, validated by an act of the Legislative Assembly of the Territory of Utah, and all other acts and parts of acts of said Legislative Assembly which "establish, support, maintain, shield, or countenance polygamy." Section three limits the value of real property to be held in any Territory of the United States by any religious corporation or association to the sum of fifty thousand dollars. This last section became section 1890 of the Revised Statutes of the United States.

This anti-polygamy act remained in force as originally enacted for nearly twenty years, when it was amended by what is known as the Edmunds law, entitled "An act to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States, in

reference to bigamy, and for other purposes," approved March 22, 1882 (U. S. Stat. at Large, vol. 22, chap. 47, page 30). This act contains nine sections, but only the first and second sections are amendatory of the original act. Section one amends section one of the anti-polygamy act, section 5352, R. S. U. S., and section two has a saving clause as to offenses committed prior to the passage of this amendatory act. The other sections, except the last, which is numbered nine, relate to the defining of the offense of unlawful cohabitation, the method of procedure in the courts in the prosecution of the cognate offenses of polygamy and unlawful cohabitation, the qualification of jurors, a provision for the amnesty of offenders convicted under prior laws; legitimates the issue of Mormon marriages born prior to January first, 1863; disqualifies polygamists and bigamists as voters and makes them ineligible to hold office or any place of public trust.

Section nine provides for a board of commission, to be ap-
68 pointed by the President of the United States, by and with the advise and consent of the Senate, to have control and charge of elections and registration in Utah, etc.

The next law of this subject is found in the act which took effect, without the signature of the President, March 3, 1887, which is familiarly known as the Edmunds-Tucker act, the title to which is quoted *supra*. It has twenty-seven sections, and the subject-matter of the act is much broader than the title. It is not wholly amendatory of the Edmunds law of March 22, 1882, but contains many other matters foreign to the object and scope of the act as expressed in the title, which does not contain the clause "for other purposes," which is inserted therein only as a part of the title of the Edmunds law. The act is a mosaic of legislation, and its loose arrangement is a powerful argument in favor of the wise provision of the constitutions of many of the States, which does not appear in the Federal Constitution, that no bill except general appropriation bills and bills for the codification and general revision of the laws shall be passed containing more than one subject, which shall be clearly expressed in the title.

Grouping the sections in some sort of system, it will be observed that sixteen sections (6, 7, 8, 11, 12, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, and 27), by the express terms of each respectively, apply only to the Territory of Utah. In the above-indicated order they repeal laws of Utah providing that prosecutions for adultery can only be commended on the complaint of the husband or wife; enlarge the powers and jurisdiction of the court commissioners appointed by the supreme and district courts of Utah; enlarge the powers of the United States marshal for Utah and his deputies; repeal laws of Utah giving illegitimate children capacity to inherit from the father; repeal laws of Utah conferring jurisdiction on probate courts or judges thereof other than matters of administration of the estate of decedents and the guardian-
ship of persons and property of infants and those of
69 unsound mind; repeal laws of Utah incorporating the Perpetual Emigration Fund Company, dissolve that corporation

and prohibit the re-incorporation thereof or of associations of like character; require the Attorney General of the United States to institute proceedings in the supreme court of Utah to carry into effect the provisions of section fifteen, and to dispose of the property of said corporation mentioned therein; repeal the act of the Legislative Assembly of Utah and of the so-called State of Deseret incorporating, continuing, or providing for the Mormon church; dissolve said corporation and require the Attorney General to institute proceedings to wind up its affairs, etc.; provide for the appointment of judges of the probate courts in Utah by the President, by and with the advice and consent of the Senate, and annul laws of Utah providing for the election of such judges; repeal laws of Utah authorizing women to vote, and prohibit their voting in that Territory; repeal laws of Utah providing for the numbering and identifying of the ballots of electors at any election; provide for the redistricting of Utah and the apportionment of representation in the territorial legislature, and that none but citizens of the United States shall vote at any election in said Territory; continue in force the provisions of section nine of the Edmunds law of March 22, 1882, referring to the registration of voters and the elections in Utah, until by suitable legislation of the Legislative Assembly thereof the provisions of the law are re-enacted and approved by Congress; prescribe qualifications for voting and holding office in Utah, and a test oath for voters, officers, and jurors therein; abolish the office of territorial superintendent of district schools created by the laws of Utah, and require the supreme court of that Territory to appoint a commissioner of schools, with the same powers and duties exercised by such superintendent and with additional powers and duties prescribed by the act, and suspend the laws of Utah for the election and appointment of such officer last named, and repeal the militia laws of Utah.

70 Six sections of the act (1, 2, 3, 4, 10, and 18, the dower section) do not express where they apply in direct terms, but it may be easily gathered from the context of the original and amendatory acts that all but the last section named, 18, are applicable to all of the Territories. Sections three, four, and five enlarge the number of offenses that may be prosecuted and punished, and were enacted doubtless to shut off not only polygamy, where proof might be difficult to obtain, but all acts of unlawful sexual intercourse, as these sections define the cognate offenses of adultery, incest, and fornication, and prescribe penalties therefor. Section 10 is in the nature of a proviso to section 9 and saves the right to introduce other legal proof of marriages than the record thereof provided in said section 9 and made *prima facie* proof of the facts therein stated, while sections 1 and 2 respectively make the husband or wife of the accused a competent witness, under certain restrictions, in all prosecutions for bigamy, polygamy, or unlawful cohabitation and provide for a summary method for securing the attendance of witnesses in such prosecutions.

Four sections of the act (9, 13, 14, and 26), by the express terms of each respectively, apply in any or all of the Territories. They pro-

vide for the certifying of all marriages solemnized in the Territories and for the record thereof; for proceedings to forfeit the property of religious corporations or associations obtained or held in excess of the limit of fifty thousand dollars and in violation of section three of the anti-polygamy act of July 1, 1862 (R. S. U. S., sec. 1890), and for the escheat thereof; for summary process to compel the production of all books, papers, documents, and records of such corporations or associations, and provide for the appointment of trustees to hold the real property of such religious corporations and the manner of such appointment.

71 Nine sections of the act (6, 11, 12, 15, 17, 19, 20, 21, and 27) repeal or annul in express terms laws of Utah on subjects named therein, showing conclusively that Congress had full knowledge of the laws of Utah deemed obnoxious and by it disapproved and annulled. Section eleven of the act annuls and disapproves laws of Utah which provide for or recognize the capacity of illegitimate children to inherit or become entitled to any distributive share in the estate of the father or saving the rights of all illegitimate children legitimated by section seven of the Edmunds act of March, 22n-, 1882, and of illegitimate children born twelve months after the passage of the act (the Edmunds-Tucker law). No section of the act modifies or changes in any way, by express terms or by any inference, the laws of descent or distribution of any Territory except that of Utah.

This leaves for consideration the dower section, numbered 18, which does not state where it applies. It was undoubtedly borrowed from the laws of New York relating to the dower of widows, as appears from the Congressional Record, 49th Congress, vol. 17, part 1, page 457, proceedings of the Senate of January 6, 1886. Senator Edmunds, the author of the Senate bill, recognized this source of the dower section, as he stated, on moving certain amendments thereto, that paragraph *a* of said section, then section 25 of the bill (S. B., 10), was, he believed, "taken verbally from the laws of the State of New York, which are very much like the laws of other States." A comparison of the New York statute with section 18 of the Edmunds-Tucker act discloses that but few changes were engrafted on the New York law. The words "unless she shall have lawfully released her right thereto," in paragraph *a* of section 18, were added as a measure of precaution, and where reference is made in the body of the section to a mortgage there is added "or conveyance in the nature of a mortgage," and where the word "mortgagee" is found in like situation the words "or grantee in such conveyance" are added; but notwithstanding these modifications, and another

72 which we shall presently examine, it is apparent that the structure of this dower section is based upon the New York statute, of which it is almost an exact copy. In paragraph *b* of the dower section the words "this State," as they appear in the New York statute, are stricken out and the words "the Territory" inserted in lieu thereof. As we think that this paragraph, which is the only guide or reference in this disputed section to the locality

where the same applies, will materially aid in the construction of the entire section, we quote the paragraph in full:

"*b.* The widow of any alien who, at the time of his death, shall be entitled by law to hold any real estate, if she be an inhabitant of the Territory (this State in New York statute) at the time of such death, shall be entitled to dower of such estate in the same manner as if such alien had been a native citizen."

The borrowed law applied to but one jurisdiction, "this State." Is it not plain to be seen that the one who drafted the bill intended by striking out these words and inserting in their place "the Territory," that the section should apply to but one jurisdiction, "the Territory" he had in his mind at the time? Contrasted with the language employed in three acts of Congress—the anti-polygamy law, the Edmunds and the Edmunds-Tucker acts—it appears that when Congress legislated for all of the Territories it did so in the act in express terms, and it so spoke when legislating for some particular Territory. This has been the custom of Congress in its acts relating to all or any of the Territories not only in the acts we have been considering, but in all of its legislation of many years concerning the Territories. So it was held by the supreme court of the District of Columbia in the case of the United States *v.* Millard H. Crawford, reported in the Central Reporter, vol. XII, 404, that these acts which we are considering, although containing the language, "in the Territory of the
73 United States or other place over which the United States have exclusive jurisdiction," did not apply to the District of Columbia, and that a prosecution for fornication under section five of the Edmunds-Tucker act could not be maintained under the law in said jurisdiction, inasmuch as the history of legislation in reference to that District shows that where Congress intended to legislate therefor its habit has been to so say in express terms, and this decision was rendered in the face of the fact that Congress has exclusive jurisdiction over the said District. When Congress limits the operation of any law to a particular district or districts it has invariably, we believe, pointed out specifically the locality or localities where the legislation is meant to apply. In all such cases we think that the presumption would be that any given locality is not within the operation of the statute unless clearly made so upon the face of the act itself. This seems to be the theory of the case just quoted.

It is urged that these words, "the Territory," should be so construed as to mean the territory in *t*hich the real estate is situate and not the Territory of Utah, but we find in the act that where such words were necessary to make clear the meaning they were carefully inserted. In section 13 of this Edmunds-Tucker act it is made the duty of the Attorney General of the United States to institute proceedings to forfeit and escheat to the United States the property of corporation- and associations held in violation of the acts of Congress, and this section also provides that "all such property so forfeited and escheated to the United States shall be disposed of by the Secretary of the Interior and the proceeds thereof applied to the use and benefit of the common schools in the Territory in which such

property may be." Such care exercised in one portion of the act is striking and significant, as it shows the intent and purpose
74 of Congress in harmony with its habit, as when a provision is made for the benefit of or applicable to any or all of the Territories it is so stated or may be easily gathered from its enactment. It is further argued with considerable ingenuity that this dower section is separately written, like other parts of the bill, and that the subjects embraced in the different sections were strung together without logical sequence or any proper classification of subjects, and that the fact that Utah and no other Territory is specifically mentioned in the preceding section, 17, wherein the incorporation of the Mormon church is dissolved and proceedings provided for the winding up of its affairs in the courts of Utah, and that section 19, following, providing for the appointment by the President, by and with the advice and consent of the Senate, of all judges of the probate courts in Utah and disapproving and annulling all laws of that Territory which require the election of such judges, has no bearing in the construction of this section eighteen. This view we do not entertain, as we believe that it is not in harmony with the principles governing the legal construction of an act. Not only is each portion of an act to be construed with every other portion, but the entire act is to be construed in connection with all other acts *in pari materia*. The division of an act of Congress into sections does not interfere with this principle of construction. The division of legislation by different sessions of Congress as separated by many years does not vary the rule; nor does the division of legislation into different acts interfere with it. It is contended that sections which do not have within themselves a limitation of their application apply "throughout the entire jurisdiction over which Congress may legislate," and that sections three, four, and five of the Edmunds-Tucker act do so apply because not so limited. We have already indicated our views on that
75 point, but we may say further that we do not consider it a safe rule to follow in the construction of congressional legislation. A better reason may be found why these sections, 3, 4, and 5, apply in all of the Territories (not throughout the entire jurisdiction over which Congress may legislate) than the reason given in the general language of the sections. Why should each section specify the limit or extent of its application? Where a limitation is once ascertained and clearly defined, what necessity is there for repeating it in legislation upon the same subject until the limitation is changed, whether the legislation is all in the same section or in the same act or of the same year or by the same Congress, or whether it is in many sections or in many acts of many years by many Congresses? The limitation may be expressed over and over again, as it often is; but is this necessary? Sections one and two of the act, general in terms, are doubtless applicable in all of the Territories, because they make specific provisions in certain proceedings, examinations, and prosecutions marked out in the act to which this Edmunds-Tucker act is amendatory, and which are applicable in all of the Territories. Sections three, four, and five apply to the

same territorial extent, because of the natural and logical connection of the language as well as of the subject-matter, and because they define and prescribe a penalty for cognate offenses to those of polygamy and unlawful cohabitation, defined in the last preceding act. There is nothing to indicate an intention to make any change in the jurisdiction where these parts of the act apply. The numbers of the sections interpolated are insignificant and do not of themselves change the meaning of the significant words of the section or affect them in any way. This division of a law into sections is purely arbitrary and is controlled by no rules of grammar, logic, or law, and is made merely for convenience of reference, and is no more a part of legislation than mile-stones are a part of the highway.

76 So of section eighteen—the dower section. The language is not to be severed from its actual and natural connection with what follows and what precedes it. If the words "sec. 18" had been omitted and had not been inserted until the point where "sec. 19" is placed, there would have been no question raised. What effect can these words, sec. 18, have upon the meaning of the effective language of the act? This brings us to the consideration of the relative words "the Territory," and we must ascertain what Territory is meant. All language is relative to and dependent upon other language employed in the same and immediate connection. The expression quoted is relative in a more specific and in a grammatical sense, and the rule for our guidance in this particular is not a doubtful one. The authorities appear to be numerous and harmonious to the effect that "relative and qualifying words and phrases grammatically and legally, where no contrary intention appears, refer solely to the last antecedent." Sutherland on Statutory Construction, section 267, and the authorities there cited. The last antecedent Territory is Utah. Why do not the relative words "the Territory" refer to the last antecedent? Where does the contrary intention appear? In the original bill as it passed the Senate the dower section was the last section of the bill and followed section 24 thereof, which declares vacant the office of territorial superintendent of district schools, created by the laws of Utah, and provides that the supreme court of the Territory shall appoint his successor, etc. This provision, somewhat modified, has been incorporated in section 25 of the act. In the House bill, which was passed as a substitute for the Senate bill, the dower section was numbered 22 and followed a section annulling and declaring void all laws

77 passed by the General Assembly of Deseret or by the Legislative Assembly of Utah granting and confirming any water, timber, or herd rights on any part of the public domain or any special privilege therein to any person or any civil or ecclesiastical corporation or association, etc., which was eliminated from the bill by the conference committee, and preceded a section relating to the formation of new election districts in Utah and providing for the new apportionment for members of the Utah legislature. (*Vide* Congressional Record, vol. 18, part I, pp. 581–583.) Hence it appears that in every arrangement of the bill and its subdivisions into

sections in all of the mutations of legislation this dower section either followed a section or was imbedded between sections in terms applying only to the Territory of Utah.

But we may decide this question upon broader grounds that appear to us to be conclusive. At the time of the passage of the Edmunds-Tucker law there were eight Territories of the United States, viz., Arizona, Dakota, Idaho, Montana, New Mexico, Utah, Washington, and Wyoming. Montana alone had dower, and it had been abolished by statutes that had stood for many years in Dakota, Idaho, Utah, and Wyoming. Compiled Laws of Utah, 1876, sec. 1022, found in sec. 2530, C. L., 1888; C. L. Dakota, 1887, sec. 3402; Revised Statutes Idaho, chap. III of title II, sections 2493–2512, revision of 1887; R. S. Wyoming, 1887, sec. 2221. In Arizona, Idaho, New Mexico, and Washington the law of community property prevailed, to which the Pacific States and Territories have clung — so much persistency. It came in with the law of France and Spain and is a legacy of the Louisiana purchase and the Mexican accession. The central or fundamental idea of community system is that marriage creates a partnership in property between husband and wife, and that all property resulting from the labor of both or either of them, except by gift, devise, bequest, or descent, called acquets or acquest property, enures to the benefit of both of them; and, though community property has not all the in-
78 cidents of partnership property, it has many of them and is commonly spoken of as partnership property. With some changes, such as making provision for the segregation of the separate property of either spouse from the community property and other slight modifications, this law is not only in force in these jurisdictions along the Pacific coast, but has found deep root in the legislation of the States of Texas and Louisiana. The system is a child of the civil law, and is not recognized by the common law.

In Washington it seems that the husband cannot encumber or sell the community real estate unless the wife join in the deed or other instrument of conveyance by which it is conveyed or incumbered, and upon the death of the husband or wife the survivor has one-half of the community property, freed from all but the community debts, and the other half is subject to the testamentary disposition of the husband and wife, subject to the community debts. In Idaho the husband has the management and control of the community property, with the like absolute power of disposition (other than testamentary) as he has of his separate property or estate; but such disposition does not extend to the homestead occupied or used by the husband or wife as a residence. In Arizona the husband only may dispose of the community property during coverture.

In all of these seven Territories where dower was abolished or where community property was substituted for it the most liberal provisions exist as to homestead rights, and the consent of the wife must be had to sell or encumber the homestead, the value of which ranges from one thousand dollars in Washington to five thousand dollars in Idaho. The widow is given a large share of her hus-

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band's estate where he dies intestate. Where there are a surviving child or children she is given a moiety of the estate in some of these jurisdictions, in others one-third, and in the event of no issue surviving the deceased husband she has even a larger share of the
79 estate, so that in these Territories she was dealt with far more graciously than at the common law. R. S. Arizona, 1887, sections 2100–2102, 1460; Compiled Laws of New Mexico, 1884, sections 1411 to 1414 and 1422; C. L. Dakota, 1887, sections 2594, 3401, 3402; Code of Washington, 1881, sections 342–348, 2400–2417, and laws of 1887–'8; R. S. Idaho, sec. 2493–2512, pp. 307–309 and pp. 363–366, 606–609, 645–649; C. L. Utah, 1876, sections 700–732.

In Wyoming the homestead can only be sold or encumbered with the consent of the wife, she being required to join in the mortgage or deed, and the right of homestead is to the extent of fifteen hundred dollars, the proceeds upon the sale thereof being exempt from execution or attachment as well as the homestead itself. The homestead, with a considerable amount of the property of the decedent, is set apart for the widow and does not pass into administration. If the husband die intestate the widow receives one-half of the estate if there be a surviving child or children or the descendents thereof, and if there be none all of it if the same does not exceed in value ten thousand dollars, and if above that amount she receives three-fourths of the estate and the other heirs named in the act one-fourth. R. S. Wyoming, sections 2122, 2780, 2789, 2063, 2064.

It may be true that in Wyoming and probably in some of the other Territories existing at the time of the passage of the Edmunds-Tucker law a profligate husband might dispose of by will his entire property except the homestead and thus leave the widow without means, but such could not be the case in Washington or Idaho and probably in other of the seven Territories named. There the right of community property vesting in the wife could not be the subject of testamentary disposition. It is incredible that Congress, knowing all these laws, could have intended to confer a lesser right
80 to married women in those Territoei-s which provided more generously for them than the Edmunds-Tucker law. Its anxiety was to protect the first or lawful wife of Mormon or plural marriages, and this appears plainly in the report of the conference committee of the Senate and House on the various bills, as a paragraph added to the dower section was stricken from the act, and this provided that the term "lawful wife" referred to in the section as it now stands should be held to mean in all cases of Mormon or plural marriages the first wife, and that such wife only should be entitled to dower under the act on the death of her husband. The reason for striking this clause from the bill was stated to be that it was best to leave that matter to the courts.

Cong. Record, 49th Congress, vol. 18, part I, page 583, and *ibid.*, part II., p. 1879.

Dower was conferred by this act to protect the first wife by offer-

ing to her and her children privileges which were denied to them under the laws of Utah and to prevent the husband there from making such testamentary disposition as to exclude the first wife and the legitimate children or to force her and her children to share the property with other wives and children of a polygamous marriage.

The law of Utah on the subject of distribution of and the right of succession to the estates of deceased persons at the time of the passage of the Edmunds-Tucker law was as follows:

"SECTION 25. Illegitimate children and their mothers inherit in like manner (as legitimate) from the father, whether acknowledged by him or not, provided it shall be made to appear to the satisfaction of the court that he was the father of such illegitimate child or children." Compiled laws of Utah, 1876, sec. 677.

This act was declared valid and binding, and an illegitimate child was allowed to inherit his share of his deceased father's estate by the decision of the Supreme Court of the United States in the case of Cope *v.* Cope, 137 U. S., 682, it being held that the Edmunds-Tucker law expressly saved such rights by the proviso to the eleventh
81 section thereof.

There was no such act in any other Territory, and it seems clear to us that this dower section was aimed solely at the condition of affairs existing in Utah. Congress did not surely, while legislating to protect the lawful wife in Utah, intend to supplant the beneficent provisions of the laws of those Territories which had with a free hand bestowed the right of community property upon the lawful wife. It did not intend to strike down any of the rights which married women possessed there, and to grant this to be true is to concede that the law doe- not apply and was never intended to apply to Wyoming, as it must apply to all of the Territories or to Utah alone. The abolition of dower in the Territories where the law of community property did not prevail was probably caused by a desire to remove all restraint from alienation, except in the Territory of Utah, where illegitimate children and their mothers were allowed to inherit and where the practice of plural marriages was covertly upheld and boldly recognized in the statutes.

The Wyoming law was borrowed from Colorado, where it is found on the statute books to-day, and was followed by a more valuable gift than the right abrogated, as the innovation was condoned by granting to the widow a larger share in the estate of her intestate husband than was bestowed by the common law and by enlarging her rights as a *feme covert*, so circumscribed by the common law.

If the position be taken that the act conferring dower did not repeal the laws relating to community property where they had sway it will readily be seen that such legislation would have been fruitful source of litigation, an absurd attempt to engraft the dower right of the common law upon the unfriendly and alien root of the civil law and to give to the widow a dis-portionate share in her husband's realty, a position that need but to be stated to show its absurdity.

82 Congress must be presumed to have known the status of all this diverse legislation in all of these jurisdictions at the time of the enactment of the Edmunds-Tucker law. A statute is always construed with reference to the intent of the legislative power, and to arrive at that intent the courts always first undertake to ascertain the mischief which the legislature had in view and which they desired to correct.

An examination of all these statutes relating to the practice of polygamy shows that the purpose of Congress was to destroy it in the Territory of Utah, where it was chiefly intrenched. U. S. *v.* Millard H. Crawford, *supra.* It did not intend to upset the laws of seven jurisdictions where polygamy had not gained such a foothold or to throw into them an apple of discord to be fought over in the courts. It had wisely provided in its legislation regarding certain of the Territories that the laws passed therein should be submitted to Congress, and if disapproved the same should be null and void. R. S. U. S., sec. 1850. It provided, further, that in all of the Territories a copy of the laws and journals of the Legislative Assembly within thirty days after the end of each session thereof should be transmitted to the President, and that two copies of the laws for the use of Congress should within the same period be forwarded to the presiding officer of each house of Congress. R. S. U. S., sec. 1844. The object of these provisions was to keep the executive and legislative departments of the Federal Government constantly apprised of all territorial legislation, to the end that if the same or any part thereof was objectionable to Congress it might be repealed or amended.

Clinton *et al. v.* Englebrecht, 13 Wallace, 446.
Miners' Bank of Dubuque *v.* State of Iowa, 12 Howard, 8.

83 An inspection of the congressional debates upon the bill which culminated in the Edmunds-Tucker act discloses that none of the laws of the different Territories upon the rights of married women, community property, or accession or distribution of the estates of decedents were discussed or even mentioned save, perhaps, as to Utah. There was not the slightest indication of any dissatisfaction in the minds of the national legislators, some of whom were able jurists, with the laws of any Territory upon these subjects, except as to the laws of Utah. One may look in vain in the discussions upon the bill for any design, intent, or purpose to annul or modify any law of any Territory except Utah in these respects. The action of Congress on the bill is properly denominated in the Congressional Record "polygamy and affairs in Utah," and the course and tenor of all the debates plainly indicate that these subjects alone received the attention of Congress in the two years of the gestation of this statute. Moreover, Congress seems to have been extremely anxious, even in the case of legislation in Utah, to preserve the rights of illegitimate children there, for it enacted as a proviso at the end of section eleven of the act that said "section shall not apply to any illegitimate children born within twelve months after the passage of this act nor to any child made legitimate by the seventh section

of the act of March 22, 1882." This solicitude of the law-making power was recognized in a remarkably clear and able opinion of Mr. Justice Brown in the case of Cope *v.* Cope, *supra*, which may well be quoted as an authority in favor of many of the propositions we have laid down herein. Such tender solicitude as to existing rights which this act breathes concerning "affairs in Utah" shows the disposition that Congress had in the passage of this act, and that it certainly ought to have had the same paternal regard for other communities which had been fostered with so much care on the frontier.

84 The whole current of congressional legislation, ever since Territories have been created, concerning them and their internal affairs, has been to disapprove and annul laws objectionable and displeasing to Congress by express terms and not by any implication, and the same course is pursued in the act before us. Why should such care be exercised in regard to Utah and not to other Territories? It seems clear to us that none of the laws of the Territories other than Utah having been disapproved or annulled on the subjects of dower, community property, or succession, that Congress never intended to disapprove and annul them.

To hold otherwise is to stretch the rules of construction to an unreasonable length and to be blind and deaf to the history of all congressional legislation concerning the Territories. Nay, more; it is to say that Congress has set aside without reason and by inference and implication the great right of home rule, of dealing with "rightful subjects of legislation," vested in territorial legislatures and only withdrawn in extreme cases.

We cannot extend the application of this dower section to embrace this jurisdiction in common with others without being against reason and precedent. It is true that the supreme court of the State of Montana, in the case of Chadwick *et al v.* Tatem *et al.*, 25 Pacific Reporter, 728, held that the Edmunds-Tucker act conferred dower in the Territory of Montana and in other Territories, but the learned counsel for the plaintiff in error, with commendable frankness, admitted that he had learned upon inquiry that that point had not been raised in the brief of counsel or argued before that court. With all due deference to the learned judge who delivered the opinion of the court in that case, we think that an examination of the opinion will show that such a statement was not necessary

85 to the decision of the question, as the court held that the law of Montana conferring dower had not been repealed by the codification of the statutes of that Territory, and because it appears that the inchoate right of dower had become consummate long before the passage and taking effect of the Edmunds-Tucker act.

It has been held in a recent case before the Supreme Court of the United States that in all cases of ambiguity the contemporaneous construction, not only of the courts, but of the departments, and even of officials whose duty it is to carry the law into effect, is controlling.

Schell's Executors *v.* Fauché, 138 U. S., 562.

In the opinion of the court a case is cited from 1 Cranch, 299, 309, where it was held that a practical construction of the Constitution of the United States that the justices of the Supreme — had a right to sit as circuit judges, although not appointed as such, was not open to objection. Says the court: "It is sufficient to observe that practice and acquiescence under it for a period of several years, commencing with the organization of the judicial system, affords an irresistible answer, and has, indeed, fixed the construction. It is a contemporary interpretation of the most forcible nature. This practical exposition is too strong and obstinate to be shaken or controlled."

In the case of Clinton *et al. v.* Englebrecht, 13 Wallace, 446, *supra*, in passing upon the question of following in the Federal courts the laws of the Territory wherein the same are held relating to the impaneling of jurors, the court says: "This uniformity of construction by so many territorial legislatures of the organic acts in relation to their legislative authority, especially when taken in connection with the fact that none of these jury laws have been disapproved by Congress, though any of them would be annulled by such disapproval, confirms the opinion, warranted by the plain language of the organic act itself, that the whole subject-matter of jurors
86 in the Territories is committed to territorial regulation."

Vide Martin *v.* Hunter, 1 Wheaton, 304; Cohens *v.* Virginia, 6 Wheaton, 264; Cooley *v.* Philadelphia Port Waredens, 12 Howard, 299; Burrow-Giles Lithographic Co. *v.* Sarony, 111 U. S., 53; Pollock *v.* Bridgeport Steamboat Co. ("The Laura"), 114 U. S., 411.

The construction of this act—the Edmunds-Tucker law—in relation to the application of the dower section thereof to the Territories by jurists and legislators of the Territories affected ought, we think, to have a controlling effect. It is a contemporaneous construction of the highest character and falls within the decisions above cited. In Utah alone, in its compilation of 1888, is section 18, the dower section, recognized as a part of the law. There has been no legislation in the other Territories affected adjusting their statutes to this new condition of affairs, if it existed, and this omission is convincing proof that said section is not regarded as in force in those jurisdictions. Washington has amended her community-property act by providing, among other things, that the husband or wife may convey to the other his or her share of the community property, and this was done by an act approved February 2, 1888, nearly a year after the Edmunds-Tucker act took effect and while Washington was yet in its territorial condition. The compilation of Dakota, while containing its organic act and the provisions of the Revised Statutes of the United States relative to it and common to all the Territories, including certain sections of the Edmunds-Tucker act, does not refer to the dower section. The law of Arizona relating to the rights of married persons was submitted by the commission revising her laws, and was passed by her legislature and received the approval of her governor February 28, 1887, nine days after the Edmunds-Tucker law came into the hands of the President, and

when its provisions must have been known to the entire country.

87 The laws of that Territory relating to descent and distribution were approved March 8, 1887, five days after the taking effect of the said act of Congress. The revision of Idaho went into effect after this act became a law. In all of the Territories except Utah, where the dower section probably applies, and in Montana, where dower existed at the time of the passage of the act, the utmost disregard has been manifested as to this section, which, if it were a law, would be fraught with so much interest to the people. We cannot imagine such an apathy on the part of lawyers and laymen if the section conferred dower in these jurisdictions, and this palpable di-regard of the section plainly indicates that it is not considered applicable where it has been so profoundly ignored.

Taking into consideration, therefore, the inherent evidences of the act itself, the history of legislation of Congress for the Territories, the legislation on the subject of polygamy, the construction of the dower section, the source from whence it was derived, the status of the laws of the different Territories at the time of the passage of the Edmunds-Tucker act, and the construction evidently put upo- the disputed section, we reach the conclusion that said section eighteen of said act, relating to dower of widows, does not confer dower upon married women in the late Territory of Wyoming, and was not at any time applicable to said Territory. This cause was pending for a long time in the supreme court of the Territory, and it is important that the grave questions involved in the case should be speedily settled.

The judgment of the district court of Carbon county for the defendants in error is affirmed.

88 Merrell, J., having been of counsel in kindred cases and announcing in open court his disqualification under the provisions of section six of article V of the constitution of this State, the Honorable Richard H. Scott, judge of the district court of judicial district number one, was called in by the remaining judges of this court and sat with them in the hearing of this cause.

Conoway and Scott, JJ., concur in the foregoing opinion.

And thereby affirming the judgment of the court below in favor of said defendants in error; to which judgment and decision of the court the plaintiff in error, by her counsel, then and there duly *expected.*

And afterwards, to wit, on the 24th day of June, A. D. 1891, the said plaintiff in error filed her petition for rehearing in words and figures following, to wit:

89 In the Supreme Court of the State of Wyoming.

AMANDA W. FRANCE, Plaintiff in Error,
vs.
JOHN W. CONNOR and WILLIAM R. BROWN, Defendants in Error.

Petition for Rehearing.

Comes now the plaintiff in error and moves the court to grant a rehearing of this cause upon the following points, upon which the court erred in rendering its judgment and delivering its opinion on the first day of June, A. D. 1891:

First. That under and by virtue of an act of the Congress of the United States entitled "An act to amend an act entitled An act to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States in reference to bigamy, and for other purposes, approved March 22nd, 1882," which became a law March 3rd, 1887, the said plaintiff in error was and is entitled to dower in the lands described in the petition filed in the district court in this cause by the plaintiff in error, as widow of James France, deceased, the said James France having died while a citizen of the United States and a resident of the county of Carbon, in the Territory of Wyoming, while Wyoming was a Territory; that section eighteen of said act of Congress, providing for dower, applied to the Territory
90 of Wyoming, and the right of dower in such lands vested in the plaintiff in error prior to the admission of Wyoming as a State.

Second. The section of the act in question is general in its terms and character and cannot be rightfully held to apply to any limited jurisdiction, but must be deemed to apply over the entire jurisdiction for which Congress could legislate upon the subject.

Third. The fact that at the time of the passage of this act of Congress in several of the Territories the law of community property prevailed can have no weight in determining the application of this section to Wyoming or to any other Territory.

Fourth. Congress had undoubted authority and power to legislate upon the subject of dower for the Territory of Wyoming, and the Territory of Wyoming was subject to all of the general laws of Congress. This was a general law; it was general in its terms. Many of the provisions of the act which are general in their language confessedly applied to the Territory of Wyoming as well as to all of the Territories, and Congress, possessing such power and authority and using general language, must be held to have intended that this section conferring the right of dower should apply to Wyoming.

C. N. POTTER,
Attorney for Plaintiff in Error.

Which said motion for rehearing was endorsed as follows: "Supreme court." "Amanda W. France *vs.* John W. Connor and William R. Brown." "Petition for rehearing." "Supreme court,

Wyoming. Filed June 24th, 1891. Richard H. Repath, clerk." "C. N. Potter, att'y for pl'ff in error."

91 And be it further remembered that on the 25th day of June, A. D. 1891, the said petition for rehearing was argued and submitted to the court, and the court thereupon, upon the 30th day of June, A. D. 1891, denied said petition for rehearing without delivering any opinion thereon.

To which judgment and opinion of the court in overruling and denying said petition for rehearing the plaintiff in error, by her counsel, then and there duly excepted; and inasmuch as the above matters do not fully appear of record in said cause the plaintiff in error tenders this her bill of exceptions and prays the court to sign and seal the same and order the same to be made a part of the record in this cause.

All of which is accordingly done as prayed for this 30th day of June, A. D. 1891, in open court.

HERMAN V. S. GROESBECK, [SEAL.]
Chief Justice of the Supreme Court of the State of Wyoming.
ASBURY B. CONOWAY, [SEAL.]
Justice of the Supreme Court of the State of Wyoming.

92 Which said bill of exceptions is endorsed as follows, to wit:

No. 70. In the supreme court. Amanda W. France, plaintiff in error, *vs.* John W. Connor and William R. Brown, defendants in error. Bill of exceptions. Supreme court, Wyoming. Filed June 30th, 1891. Richard H. Repath, clerk.

93 And that thereafter, to wit, on the 12th day of September, A. D. 1891, the plaintiff in error did file in the office of the clerk of said supreme court of Wyoming her bond; which said bond is in words and figures as follows, to wit:

"In the Supreme Court of the State of Wyoming.

"AMANDA W. FRANCE, Plaintiff in Error,
vs.
"JOHN W. CONNOR and WILLIAM R. BROWN, Defendants in Error.

"Know all men by these presents that we, Amanda W. France, of the county of Arapahoe and State of Colorado, as principal, and Charles W. Riner, of the county of Laramie, in the State of Wyoming, as surety, are held and firmly bound unto the above-named John W. Connor and William R. Brown in the sum of eight hundred dollars, to be paid to the said John W. Connor and William R. Brown, and to the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

"Sealed with our seals and dated the twelfth day of September, in the year of our Lord one thousand eight hundred and ninety-one.

"Whereas the above-named Amanda W. France has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the supreme court of the State of Wyoming:

"Now, therefore, the condition of this obligation is such that if the above-named Amanda W. France shall prosecute said writ of error to effect and answer all costs if she fail to make such proceedings in error good, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

"AMANDA W. FRANCE. [SEAL.]
"CHARLES W. RINER. [SEAL.]

"Sealed and delivered and taken and acknowledged this 12th day of September, A. D. 1891, before me—

"HERMAN V. S. GROESBECK,
"*Chief Justice Supreme Court of Wyoming.*

"Approved by—
"HERMAN V. S. GROESBECK,
"*Chief Justice of the Supreme Court of the State of Wyoming.*

94 "STATE OF WYOMING, } *ss:*
"*County of Laramie,* }

"Charles W. Riner, being duly sworn, deposes and says that he is a resident of the county of Laramie, in the State of Wyoming, and is worth the sum of three thousand dollars over and above all his debts, liabilities, and exemptions, and has property in said State subject to execution equal to that amount.

"CHARLES W. RINER.

"Signed in my presence and sworn to before me this 12th day of September, A. D. 1891.

"RICHARD H. REPATH,
[SEAL.] "*Clerk Supreme Court of Wyoming.*"

Said bond being endorsed on the back as follows:

"Doc. 2, No. 70. In the supreme court of the State of Wyoming. Amanda W. France, plaintiff in error, *vs.* John W. Connor and William R. Brown, defendants in error. Bond. Supreme court, Wyoming. Filed Sep. 12, 1891. Richard H. Repath, clerk."

95 STATE OF WYOMING, *ss:*

In the Supreme Court.

I, Richard H. Repath, clerk of the supreme court of the State of Wyoming, do hereby certify that the foregoing is a full, true, and complete transcript of the record and proceedings had in the case of Amanda W. France, plaintiff in error, *vs.* John W. Connor and William R. Brown, defendants in error, as full and complete as the same appear on file and of record in said court.

In witness whereof I have hereunto set my hand and the seal of said court this thirtieth day of October, A. D. 1891.

[Seal Supreme Court Territory of Wyoming.]

RICHARD H. REPATH,
Clerk of the Supreme Court of the State of Wyoming.

96 [Endorsed:] Supreme Court of the United States. Amanda W. France, pl'ff in error, *vs.* John W. Connor & William R. Brown, def'ts in error. Transcript of record, writ of error, return thereto, &c. Charles N. Potter, att'y for pl'ff in error, Cheyenne, Wyo.

97 In the Supreme Court of the State of Wyoming.

AMANDA W. FRANCE, Plaintiff in Error,
vs.
JOHN W. CONNOR and WILLIAM R. BROWN, Defendants in Error.

I, Herman V. S. Groesbeck, chief justice of the supreme court of the State of Wyoming, do hereby certify that this is a suit in which the plaintiff in error specially claimed and set up a right, title, and privilege under a statute of the United States and the judgment and decision herein rendered by the supreme court of the State of Wyoming was against said right, title, and privilege set up and claimed by said plaintiff in error under such statute of the United States, and that the right, title, and privilege claimed and set up by the plaintiff in error was her right to dower as widow of James France, deceased, a resident of the Territory of Wyoming at the time of his decease, in his lands located within the then Territory of Wyoming by virtue of and under an act of the Congress of the United States entitled "An act to amend an act entitled 'An act to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States, in reference to bigamy, and for other purposes, approved March 22nd, 1882,'" which became a law March 3, 1887, and the decision of the said supreme court of the State of Wyoming was against said right, title, and privelege.

HERMAN V. S. GROESBECK,
Chief Justice of the Supreme Court of the State of Wyoming.

98 [Endorsed:] Amanda W. France, pl'ff in error, *vs.* John W. Connor & William R. Brown, def'ts in error. Certificate showing Federal question. C. N. Potter, att'y for pl'ff in error.

Endorsed on cover: Case No. 14,930. Wyoming supreme court. Term No., 1456. Amanda W. France, plaintiff in error, *vs.* John W. Connor & William R. Brown. Filed November 10th, 1891.

Office Supreme Court U. S.
FILED.
APR 27 1895
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

AMANDA W. FRANCE,
PLAINTIFF IN ERROR,

vs.

JOHN W. CONNOR AND WILLIAM R. BROWN.

No. 343.

In Error to the Supreme Court of the State of Wyoming.

BRIEF FOR PLAINTIFF IN ERROR.

A. T. BRITTON,
A. B. BROWNE,
C. N. POTTER,
Attorneys for Plaintiff in Error.

WASHINGTON, D. C.:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1895.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

AMANDA W FRANCE,
PLAINTIFF IN ERROR,

v.

JOHN W. CONNOR AND WILLIAM R. BROWN.

No. 343.

BRIEF FOR PLAINTIFF IN ERROR.

Herein plaintiff in error seeks admeasurement and assignment of her dower in the real estate of her late husband, James France. The federal question presented is thus certified by the Chief Justice of the Court below (R. 51) viz:

"That the right, title, and privilege claimed and set up
" by the plaintiff in error was her right to dower as widow
" of James France, deceased, a resident of the Territory
" of Wyoming at the time of his decease, in his lands
" located within the then Territory of Wyoming by virtue
" of and under an Act of the Congress of the United
" States, entitled 'An Act to amend an Act entitled An
" ' Act to amend Section 5352 of the Revised Statutes of

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

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"That the right, title, and privilege claimed and set up
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" of Wyoming at the time of his decease, in his lands
" located within the then Territory of Wyoming by virtue
" of and under an Act of the Congress of the United
" States, entitled 'An Act to amend an Act entitled An
" ' Act to amend Section 5352 of the Revised Statutes of

" 'the United States, in reference to bigamy, and for
" 'other purposes, approved March 22, 1882,' which be-
" came a law March 3, 1887, and the decision of the said
" Supreme Court of the State of Wyoming was against
" said right, title, and privilege."

The case stands upon petition and demurrer. Such petition was filed April 1, 1889, in the District Court for Carbon County, Territory of Wyoming. Its substantial averments are:

1st. That plaintiff in error and James France were married on February 7, 1887, at Denver, Colorado, said James France at the time being a resident and citizen of the county of Carbon and Territory of Wyoming; and that on the 1st day of August, 1888, the said James France, being then also a resident and citizen of said county and Territory, departed this life intestate, leaving the plaintiff in error, his widow, surviving him.

The petition further shows that said James France, during the marriage between himself and the plaintiff in error, was seized of an estate of inheritance in certain lands, tenements, and real estate, situated in the county of Carbon, in the Territory of Wyoming, the said lands and real estate being fully described in the petition.

(R. 5, 7.)

The petition further states that the plaintiff in error, by virtue of her said marriage, and upon the death of her said husband, became and was entitled to dower in said lands; that the same has never been assigned or set off to her; that she has not received any compensation or equivalent therefor, and that she has never lawfully released her right thereto or any part thereof.

(R. 8.)

It further states that on the 16th day of March, 1888, during the marriage between said James France and the plaintiff in error, the said James France, being insolvent, did make an assignment of all his property for the benefit of his creditors to the defendants in error, said assignment being made under the laws of the Territory of Wyoming; that said assignees duly qualified and entered upon the discharge of their duties and took possession and control of all of the property so coming to them, including the lands described in the petition.

(R. 8.)

It further recites that plaintiff in error demanded of the defendants that they assign and set off to her her dower, and that the defendants refused to do so; that since the death of said James France said defendants have received the rents and profits of said lands and tenements, and have failed to account to the plaintiff for any part thereof.

General demurrer thereto was sustained in the trial court, and on writ of error such judgment was affirmed in the Supreme Court of the State. Its opinion is in the record, pp. 16–30 and 33–47.

ASSIGNMENT OF ERRORS.

1. The Supreme Court of Wyoming erred in holding the Act of Congress of March 3, 1887, *supra*, assigning dower not applicable to the then Territory of Wyoming.

2. Said Court erred in sustaining the demurrer to the petition and in affirming the judgment for defendants.

ARGUMENT.

I.

Dower Legislation.

By an Act of the Legislative Assembly of the Territory, approved December 10, 1869, dower was abolished, it being provided by that Act as follows:

"Dower and tenancy by the courtesy are abolished, and "neither husband nor wife shall have any share in the "estate of the other, save as herein provided."
Rev. Stat. 1887, Section 2221.

The law remained as above until the enactment by the Congress of the United States of an Act entitled "An Act "to amend an Act entitled 'An Act to amend Section 5352 "'of the Revised Statutes of the United States in refer-"'ence to bigamy, and for other purposes,' approved "March 22, 1882." This Act went into effect March 3, 1887, and is found on pages 635 to 641, inclusive, of Vol. 24, U. S. Statutes.

Section 18 of this Act of Congress reads as follows:

"Sec. 18. (*a*) A widow shall be endowed of third part "of all the lands whereof her husband was seized of an "estate of inheritance at any time during the marriage "unless she shall have lawfully released her right thereto.

"(*b*) The widow of any alien who at the time of his "death shall be entitled by law to hold any real estate, if "she be an inhabitant of the Territory at the time of such "death, shall be entitled to dower of such estate in the "same manner as if such alien had been a native citizen.

"(*c*) If a husband seized of an estate of inheritance in "lands exchanges them for other lands, his widow shall "not have dower of both, but shall make her election to

" be endowed of the lands given or of those taken in ex-
" change ; and if such election be not evinced by the
" commencement of proceedings to recover her dower of
" the lands given in exchange within one year after the
" death of her husband, she shall be deemed to have
" elected to take her dower of the lands received in ex-
" change.

" (*d*) When a person seized of an estate of inheritance
" in lands shall have executed a mortgage, or other con-
" veyance in the nature of mortgage, of such estate, be-
" fore marriage, his widow shall nevertheless be entitled
" to dower out of the lands mortgaged or so conveyed, as
" against every person except the mortgagee or grantee in
" such conveyance and those claiming under him.

" (*e*) Where a husband shall purchase lands during cov-
" erture, and shall at the same time execute a mortgage,
" or other conveyance in the nature of mortgage, of his
" estate in such lands to secure the payment of the pur-
" chase money, his widow shall not be entitled to dower
" out of such lands, as against the mortgagee or grantee
" in such conveyance or those claiming under him, although
" she shall not have united in such mortgage ; but she
" shall be entitled to her dower in such lands as against
" all other persons.

" (*f*) Where in such case the mortgagee, or such grantee,
" or those claiming under him, shall, after the death of the
" husband of such widow, cause the land mortgaged or so
" conveyed to be sold, either under a power of sale con-
" tained in the mortgage or such conveyance, or by virtue
" of the decree of a court, if any surplus shall remain after
" payment of the moneys due on such mortgage or such
" conveyance, and the costs and charges of the sale, such
" widow shall nevertheless be entitled to the interest or
" income of the one-third part of such surplus for her life,
" as her dower.

" (*g*) A widow shall not be endowed of lands conveyed
" to her husband by way of mortgage unless he acquire
" an absolute estate therein during the marriage period.

" (*h*) In case of divorce dissolving the marriage contract
" for the misconduct of the wife, she shall not be en-
" dowed."

We contend on behalf of the plaintiff in error that this section was effectual and in operation in the Territory of Wyoming and established a dower right to which the plaintiff in error became entitled upon the death of her husband. Upon the construction of this section the issues in this case depend.

II.

Congress can Legislate Directly for the Territory.

The Legislature of a Territory is prohibited from passing any law in conflict with the Constitution or the laws of the United States. With reference to the right of Congress to legislate for the Territories and the relation of the Territories to Congress, the Supreme Court has used the following language:

"It is certainly now too late to doubt the power of "Congress to govern the Territories. There have been "some differences of opinion as to the particular clause "of the Constitution from which the power is derived, but "that it exists has always been conceded. The act to "adapt the ordinance to provide for the government of the "territory northwest of the river of the Ohio to the require-"ments of the Constitution (1 Stat. 50) is chapter 8 of the "first session of the first Congress, and the ordinance it-"self was in force under the federation when the Consti-"tution went into effect. All territory within the juris-"diction of the United States, not included in any State, "must necessarily be governed by or under the authority "of Congress. The Territories are but political sub-"divisions of the outlying dominion of the United States. "Their relation to the general government is much the "same as that which counties bear to the respective States, "and Congress may legislate for them as a State does for "its municipal organizations. The organic law of a Ter-"ritory takes the place of a constitution as a fundamental

" law of a local government. It is obligatory on and binds " the Territorial authorities; but Congress is supreme, and " for the purpose of this department of its governmental " authority has all the powers of the people of the United " States, except such as have been expressly or by implica- " tion reserved in the prohibitions of the Constitution. In " the organic act of Dakota there was not an express reser- " vation of power in Congress to amend the acts of the " Territorial Legislature, nor was it necessary. Such a " power is an incident of sovereignty and continues until " granted away. Congress may not only abrogate laws of the " Territorial Legislatures but it may itself legislate directly " for the local government. It may make a void act of the " Territorial Legislature valid and a valid act void In other " words, it has full and complete legislative authority over " the people of the Territories and of all departments of " the Territorial governments. It may do for the Terri- " tories what the people under the Constitution of the " United States may do for the States."

National Bank v. *County of Yankton*, 101 *U. S.* 129.
American Insurance Co. v. *Canter*, 1 *Peters*, 511.
Innis v. *Bolton*, 17 *Pac.* 264.
Freeborn v. *Smith*, 2 *Wall.* 160.
Hill v. *Territory*, 7 *Pac.* 163.
Nelson v. *United States*, 30 *Fed. R.* 112.
United States v. *Church, etc.*, 15 *Pac.* 473.

If the citation of authority on this proposition is at all necessary, the above-mentioned cases clearly establish the right of Congress to legislate directly for the Territories. It is self-evident that the law of the Territory cannot stand whenever it comes in conflict with the law of the United States.

The organic Act of the Territory of Wyoming has been now merged in the Revised Statutes of the United States, so that in reality the organic law of the Territory is the Constitution and laws of the United States.

III.

The legislative power of every Territory is made to extend to all rightful subjects of legislation *not inconsistent with the laws of the United States.* (U. S. Revised Statutes, Section 1851.) And it is further provided that—

"The Constitution and all laws of the United States "which are not locally inapplicable shall have the same "force and effect in all of the organized Territories and "in other Territories hereafter organized as elsewhere "within the United States."

U. S. Revised Statutes, Section 1891.

It would be an exceedingly dangerous doctrine which should hold a law enacted by a Territorial Legislature, although valid when adopted, to be still valid and binding, although it may be absolutely in conflict and inconsistent with a law of Congress subsequently enacted.

A Territory is a part of the United States.

County of Silverbow v. *Davis*, 12 *Pac.* 688.

IV.

A LEGISLATIVE ENACTMENT TAKES EFFECT AND HAS FORCE AND IS EQUALLY BINDING AND EQUALLY OPERATIVE UPON THE ENTIRE JURISDICTION OVER WHICH THE LAW-MAKING POWER CAN REACH BY LEGISLATION, UNLESS ITS EFFECT IS EXPRESSLY CONFINED WITHIN NARROWER LIMITS.

Congress legislates in general terms without limiting or confining the application of a law; that Act, then, must be effectual throughout the entire jurisdiction over which Congress might legislate. Therefore, any general law, not locally inapplicable, adopted by Congress, must apply throughout each of the organized Territories, unless its

operation is restrained in the Act itself or by some other Act of Congress.

Now, Section 18 of the Act in question is general in its use of language. Its operation is not confined by any expression of Congress anywhere; its language is plain; it is not ambiguous in its terms; we read it and we at once know what it means. It says, "A widow shall be "endowed of one-third part of all the lands whereof her "husband was seized of an estate of inheritance at any "time during the marriage unless she shall have lawfully "released her right thereto," and no quibbling over language is necessary to understand the purport and meaning of the language quoted.

We contend, then, that the application of the section not being expressly confined, it must be held to apply and be effectual throughout and over the entire jurisdiction over which Congress has power to legislate upon the subject-matter covered by the section; and if that proposition is correct the statute must apply to Wyoming, Congress having the undoubted power to legislate upon the subject-matter for that Territory.

And we say, further, that the law of Wyoming Territory abolishing dower is inconsistent with this latter law of Congress and must therefore fall.

V.

But we contend, further, that it will appear from a careful examination of this particular Act of Congress, and the prior legislation affecting the same subject, that Congress in enacting Section 18 *intended* that it should apply to *all the Territories alike.*

The first Act of Congress covering this subject-matter was passed July 1st, 1862, the first section of which Act

is now known as Section 5352 of the Revised Statutes of the United States; that Act was originally entitled as follows:

"An Act to punish and prevent the practice of polygamy " in the Territories of the United States and other places, " and disapproving and annulling certain Acts of the " Legislative Assembly of the Territory of Utah."

Section 5352 expressly applied to all of the Territories, reading as follows:

" Every person having a husband or wife living, who " marries another, whether married or single, in a Terri- " tory or other place over which the United States have " exclusive jurisdiction, is guilty of bigamy," etc.

For some reason the remaining sections of the Act of July 1, 1862, were not included within the revision, but, bearing in mind that section one, which is now Section 5352 of the Revised Statutes, by its terms applied to each Territory, let us notice the application of the succeeding section of that Act. Section two of the act of July 1, 1862, disapproved and annulled certain Acts of the Legislative Assembly of the Territory of Utah.

(See *U. S.* v. *Church*, 15 *Pac.* 478.)

It appears, then, not to be uncommon to include in the same Act a section having general application and another section having a purely local effect. Afterwards, in 1882, Congress passed an Act entitled "An Act to amend Section " 5352 of the Revised Statutes of the United States in " reference to bigamy, and for other purposes."

U. S. Statutes, Vol. 22, pages 30 to 32, inclusive.

By this Act Section 5352 of the Revised Statutes was amended so as to include nine sections. Section one re-

enacted the old section, with some material alterations, but was still to apply to all of the Territories alike. Section three made it a misdemeanor for any male person *in any Territory* to cohabit with more than one woman. Section four refers to section three. Section five is of general application, although it is not therein expressly so stated, but it provides for challenges to juries in any prosecution for bigamy, polygamy, or unlawful cohabitation under any statute of the United States. Section six authorizes the President to grant amnesty to such classes of offenders guilty of bigamy, polygamy, or unlawful cohabitation, before the passage of the Act, on such conditions, etc., as he shall think proper; this section is also unquestionably of general application, and had there been such guilty parties in Wyoming, they would have been affected by the provisions of the section. Section seven legitimates certain issue of Mormon marriages and is expressly effectual in *all the Territories*.

Section eight disqualifies, as voters and office-holders, polygamists, bigamists, and persons guilty of unlawful cohabitation *in any Territory* or other place over which the United States has exclusive jurisdiction.

Section nine declares vacant all elections of officers in Utah, and provides for a board to be appointed by the President to have charge of the elections in Utah. This is the only section of the Act of March 22, 1882, which has a local reference or application.

Thus the Congressional legislation regarding this subject remained until 1887, and on the third day of March, 1887, there went into effect a Congressional enactment entitled "*An Act to amend an Act entitled 'An Act to amend* " ' *Section fifty-three hundred and fifty-two of the Revised* " ' *Statutes of the United States, in reference to bigamy,* " ' *and for other purposes,' approved March twenty-second,* " *eighteen hundred and eighty-two.*"

This Act leaves the provisions of the various sections of the Act of 1882 unchanged, except that some additional regulations are adopted germane to the subject-matter of section nine of the Act of 1882, referring to elections in Utah, but each other section of the former Act remains in force as one Act with the Act of 1887.

The Act of 1887 provides certain regulations governing the question of witnesses in prosecutions for polygamy, etc., which are of general application. New sections are adopted providing for the punishment of other crimes kindred to polygamy and unlawful cohabitation, and these apply alike to all the Territories, without, however, so expressly stating, but their general application will doubtless be conceded. The Act of 1887 adopts certain general regulations concerning marriages, church property, religious corporations, etc., which have express general operation and are expressly effectual in all the Territories.

The Act also contains several sections scattered through it having express reference solely to Utah.

It is this Act which contains the dower provision which we have quoted and referred to.

It will be noticed that sections three, four, and five of the Act of 1887 are not locally confined, and yet they do not by the use of express language refer to all the Territories.

These sections are similar to section eighteen, respecting the absence of any express words governing the scope of their application, and yet we would say at once that where Congress provides a punishment for any one who is guilty of the crime of adultery, the law applies to each Territory; we would not look for language expressly referring to all Territories. We cannot confine it in its application, because we cannot with certainty know to what particular locality to confine it. The fact that the crime

is more prevalent in one locality than another cannot govern its application, neither can the fact that one locality does not need such legislation have any bearing upon the question.

We can apply this line of discussion to section eighteen. It is not confined in its application by any express terms. Congress has not said "A widow in Utah shall be endowed," etc., but it has said, "A widow shall be endowed," etc.—this is general. By what method of reasoning or construction can we say that it is only a widow in Utah so endowed? Why not just as well and reasonably say that it is only widows in Wyoming, or widows in Idaho, who are referred to and intended to be affected.

Such construction must add to the section the words " of Utah " to give the section the exclusive effect desired. But legislation cannot be thus judicially amended. In *Newhall* v. *Sanger* (92 U. S. 761, 765) this Court said:

" This section expressly excludes from pre-emption and " sale all lands claimed under any foreign grant or title. It " is said that this means 'lawfully' claimed; but there is no " authority to import a word into a statute in order to " change its meaning."

VI.

It was urged by the learned counsel for defendants in error, during the discussion in the Court below, that this section eighteen can only apply to one Territory, because in its second subdivision it reads thus:

" The widow of an alien who at the time of his death " shall be entitled by law to hold any real estate, *if she* " *be an inhabitant of the Territory at the time of such* " *death* shall be entitled to dower of such estate in the " same manner as if such alien had been a native citizen."

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And the counsel insists that the use of the words "*the* "*Territory*" in the subdivision just quoted limits the entire section in its application to but one Territory, and he then assumes, by some peculiar process of reasoning, to fix upon Utah as the particular Territory to which "the" refers. It is the mainspring of the argument of the learned counsel opposing us. Why do our friends apply the section to Utah in preference to some other locality? Is it because the evil which the Act aims to remedy, viz., polygamy, is more of an evil in Utah than elsewhere? We have shown that in the case of crime such a rule could not prevail. The evil may not exist in Idaho to such an alarming extent as in Utah, nor so much in Arizona as in Utah, yet why not say that Idaho or Arizona is the Territory referred to, provided the evil exists in either of these Territories at all, and we know it does exist in both of these Territories by common report, and we know it further in the case of Arizona from the published law reports showing prosecutions and convictions for polygamy and unlawful cohabitation under these identical laws of Congress.

United States v. *Tenney*, 11 *Pac.* 472,
United States v. *Christofferson*, 11 *Pac.* 480.

Is it because the Territory of Utah is specifically mentioned in the preceding section? Nothing in section seventeen refers to any subject at all kindred to the dower right of a widow; no reference is therein made to the section following it. Section seventeen has reference only to a certain corporation existing only in Utah, and provided for only by the laws of Utah.

There does not appear to have been any regard paid to the arrangement of the sections to the end that everything pertaining to one subject shall be contiguous. What is

there in the arrangement anywhere showing a method which will aid us in our construction? Nothing. Here and there scattered through the Act is a section expressly applying to all Territories, and then either preceding or following such a section we find an independent section annulling some law of Utah, not germane at all to the subject-matter of the preceding or following section.

One is impressed with the idea upon reading the Act that each section appears to have been separately written and then put together without reference to logical arrangement. If so, how can the fact that Utah is specifically mentioned in the preceding section affect the construction of section eighteen?

We have asked if the construction placed upon these words by the learned counsel is prompted by reference to the evil of polygamy aimed at by the Act, and finding it more strongly intrenched in Utah, fasten upon that Territory for that reason. Congress expressly, by the title of the Act of 1862, and by the provisions of the Acts of 1882 and 1887, was moving against polygamy wherever it existed or might *in the future* exist. It prohibited the crime in "any Territory," and all of its provisions in that respect, by express words, cover all the Territories. Then Congress desired to prevent it in all Territories whether it existed there or not. Does the dower clause have any connection with this question? We will have something further to say in this connection later on.

Returning to the phrase, "An inhabitant of the Territory."

We submit that the proper construction of these words is shown by supplying the words necessarily understood, viz: "An inhabitant of the Territory *in which the real estate is situated.*"

And this construction is reasonable. If the section ap-

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And this construction is reasonable. If the section ap-

plies to all the Territories, then no other language could be used and retain the sense and purpose of the law. If it should read "a Territory" or "any Territory," that would utterly despoil it of its evident purpose. The intention is that the widow of an alien shall be endowed if she be an inhabitant of the Territory where the land lies, not that she should be endowed of lands in one Territory if she be an inhabitant of *another Territory*.

We need not resort to any forced or labored construction to understand these words in the sense we have taken them. It does seem to be the reasonable construction.

We submit the second subdivision should be construed as though it read: "The widow of an alien who at the "time of his death shall be entitled by law to hold any "real estate, if she be an inhabitant of the Territory (in "which such real estate is situated) at the time of such "death, shall be entitled to dower of such estate in the "same manner as if such alien had been a native citizen."

The opinion below recites that Senator Edmunds in moving this provision as an amendment to the pending Senate bill said it was, he believed, "taken verbally from "the laws of the State of New York, which are very much "like the laws of other States." Thereupon the Court adopts the view that because the words "this State" were stricken from the provision, and the words "the Terri-"tory" inserted in lieu thereof, but one Territory was meant, and that the Territory of Utah. *Non constat.* The argument is all the other way. Inspection of the laws of the then Territories will show that they recognize the right of an alien to take and hold real estate by descent and in some of them by mortgage or in collection of debts. Hence the law of the then exisiting Territories in thus providing gave full effect to this provision of the Federal law of 1887. How, then, can it be limited to Utah alone?

Why should Congress restrict such a provision to *any* one Territory when exactly the same conditions obtained in the others as well? The attempt to thus limit general legislation is to supplant plain legislative expression with judicial limitation. It becomes, not interpretation, but judicial legislation. Moreover, Congress on the same day (March 3, 1887), enacted the non-alien law, applicable in terms to all the Territories, and wherein the right of an alien to take and hold real estate by descent or in collection of antecedent debts or where the right was secured by existing treaties was expressly recognized. In face of such legislation and of these general conditions it is idle to force a construction from this language limiting the provisions of Section 18 to but one Territory. The further selection of Utah as the single Territory thus meant simply reaches a plain absurdity.

VII.

Again, it was insisted by the learned counsel below that the rule governing repeals by implication is persuasive in confining the application of section eighteen to one Territory, or rather in preventing its having any effect in Wyoming. His argument was that repeals by implication are not favored, and, where two laws can both stand, such a construction will be placed on them that they may stand together, and the law of Wyoming abolishing dower not being expressly repealed, we must construe this section eighteen so as to permit the Wyoming statute to remain in force. Regarding this proposition, we submit the following suggestions:

First. That rule cannot be considered at all unless section eighteen does apply to Wyoming. If it does not apply, then of course it is self-evident it does not repeal

our statute. If it does apply, how can the conflict be reconciled except by construing our local law as repealed or annulled? *It is in direct and positive conflict with the Congressional Act, and both cannot stand.* If one only can prevail, it must be the one enacted by Congress. If by the plain meaning of the language used, the statute operates in Wyoming, we are not permitted to restrict such operation by saying that repeals by implication are not favored.

Again, the rules of construction concerning implied repeals are only applicable to laws passed by the same legislative authority.

These rules are not to be applied in construing an Act of a State Legislature which has been rendered void by reason of its conflict with a subsequent constitutional amendment. A law of a State, valid when adopted, becomes void and of no effect if it is in conflict with the constitution of the State subsequently adopted.

The rule is not applicable in determining the question of a repeal of a Territorial statute by a subsequent law passed by Congress, as the law of Congress is analogous, in its application to the Territories, to a constitution of a State. The enactments of Congress become parts, so to speak, of the constitution of the Territory, and as between the law of a Territory and a law of Congress we are to apply the same rules of construction which would apply between the law of a State and its constitution. And, again, the relation between a Territorial statute and a law of Congress upon the same subject is similar to that which exists between the ordinances of a municipality and the laws of the State in which such municipality is located. The Legislature in adopting a general law applicable to every part of a State need not expressly repeal every ordinance of every municipality within its

limits in order to give the general effect within such municipalities as may have adopted ordinances which would be in conflict with the later general law. If the ordinance of a city is in conflict with a later law of the Legislature, the ordinance must fall.

Trustees, etc., v. *Taylor*, 30 *N. J. Eq.* 618.
Mobile v. *Dargan*, 45 *Ala.* 310.

The above authorities hold that a subsequent constitutional provision or legislative enactment in conflict with existing ordinances renders the latter void.

See also 1 *Dillon, Municipal Corporations, Sec.* 85.

The cases heretofore cited with regard to the authority of Congress over the Territories illustrate that authority by reference to its analogy to the authority of a State over its municipal corporations.

This rule concerning repeals by implication when applied as between general and special laws has no force in the case at bar, for the reason that both the Territorial law and the Congressional enactments are general laws.

In following out the position which the learned counsel assumed, the logical sequence of his proposition seems to be that we must make both the Territorial law and the Congressional enactment stand, if possible; and if by holding that the Congressional enactment applies to Utah and not to Wyoming our Territorial statute would be left in force, the Court should adopt that construction of the Congressional law. But the Courts of each Territory might take the same position and we would have the anomalous condition of things of each Territory sending the Congressional law to some other Territory and their own statute remaining in force. The Congressional enactment would then apply nowhere, and the statute of

each Territory would still be in force, although in direct conflict with the Congressional law.

At the time of this Act of 1887 Utah had a statute abolishing dower, similar to our own.

"No right of dower shall exist or be allowed in this "Territory."

Vol. 2, Laws Utah 1888, page 81.

If the position taken by the learned counsel is correct, how can it be explained that the Act of the Utah Legislature in abolishing dower has been repealed by implication? They assume, we take it, that it has been repealed by implication for the reason that nowhere in the Act of 1887 is the statute of the Territory of Utah abolishing dower expressly repealed. If it is repealed at all it is because it is in conflict with Section 18 of the Act under consideration, and therefore repealed by implication. We submit that if Section 18 by implication repeals the provision in Utah abolishing dower, it also repeals the Wyoming statutory provision on the same subject. In other words, if the rule concerning repeals by implication is of any persuasive force in the construction of this section, it must have the same force when considering its application to the Territory of Utah as in its application to Wyoming or any other Territory.

VIII.

Passing from these considerations, we ask the attention of the Court, now, to an examination of the statute in question, as affected by several well-established rules of statutory construction. And in this connection we suggest the following rules which we believe are applicable:

First. What was the cause and occasion of the passage

of the Act, and the purpose to be accomplished by it, in the light of the circumstances at the time, and the necessity of its enactment?

Second. If possible, a statute must be so construed as to make it effect the purposes for which it was intended. The interpreter, in order to understand the subject-matter and the scope and object of the enactment, must ascertain what was the mischief or defect for which the law had not provided. That is, he must call to his aid all those external or historical facts which are necessary for this purpose, which led to the enactment.

Keyport St. Co. *v.* Trans. Co., 18 N. J. Eq. 13.
Delaplane *v.* Crenshaw, 15 Gratt. (Va.) 457.
Endlich on Int. of Stat., Secs. 28 and 29.

Third. A fundamental principle in the interpretation of statutes is that the intention of the Legislature is invariably to be accepted and carried into effect, whatever may be the opinion of the Court of its wisdom or justice.

Fourth. The construction ought to be with reference to the object to be accomplished by the Act, and to keep in view the conditions existing.

Fifth. This is a remedial Act. It is a statute having in view the promotion of important and beneficial public objects. The object of remedial statutes being to * * * redress a wrong, * * * it is but reasonable to suppose that the Legislature intended to do so as effectually, broadly, and completely as the language used, when understood in its most extensive signification, would indicate.

Endlich on Int. of Stat., Sec. 107.

What was the object of Congress in the enactment of these various statutes? The answer is clear: evidently the suppression and prevention of the practice of polygamy

in the Territories and other places over which the United States has exclusive jurisdiction; to suppress and prevent the obnoxious practices of those connected with the Mormon Church, and to reduce the temporal power of that Church. This is the general object and purpose of the legislation—in fact, the very title of the Act of which Section 5352 of the Revised Statutes was a part stated that it was an act to *punish and prevent the practice of polygamy in the Territories* of the United States and other places over which the exclusive jurisdiction of the United States extends.

The original Act was found to be insufficient, and the Acts of 1882 and 1887 follow, showing the same design, having the same general object and flowing from the same motive.

What was the object in view in enacting Section 18?

Why was Section 18 incorporated in the Act of 1887? Does this have anything to do with the object and general purpose of the entire Act? It is obviously connected with the object and purpose of the Act, otherwise its presence cannot be accounted for. It was evidently adopted with the view not only of protecting the legal wife in case polygamy was practised, but it would have a tendency to bring to light the legal wife of every polygamous individual who might be the owner of real estate.

We assert then, as a proposition, that Congress adopted Section 18 as a part of the Act of 1887 to more effectually suppress and prevent the mischief aimed at, and as a part of the same general scheme and object.

If this be true, and it be also true that the general purpose and object of Congress was to suppress and prevent the evil not only in the Territory of Utah, but in all of the Territories of the United States as well, does it not logically follow that Section 18 must apply to and cover all of the

Territories of the United States? If the section was introduced in furtherance of the general object, does it not cover and operate upon and over the same jurisdiction covered by the said general object—no words of restriction being used?

To show that the *intention of Congress was to suppress and prevent the evil in all the Territories*, let us again examine briefly the Acts of 1882 and 1887. We find that by section one of 1882 any person who has husband or wife living who, *in a Territory* or other place over which the United States have exclusive jurisdiction, marries another, etc., is guilty of polygamy. We observe that section three provides that if any male person, *in a Territory* or other place over which the United States have exclusive jurisdiction, cohabits with more than one woman he shall be deemed guilty of a misdemeanor, etc. We notice that section seven legitimates the issue of bigamous and polygamous marriages known as Mormon marriages, in which such marriages have been solemnized according to the ceremonies of the Mormon sect, *in any Territory* of the United States. Section eight provides that any polygamist, bigamist, etc., *in any Territory* or other places over which the United States have exclusive jurisdiction, shall not be entitled to vote, etc.

It is thus seen that by the law of 1882 every provision aimed at polygamy and Mormon practices and marriages applies to every Territory of the United States. If Congress did not realize that there must or may have been Mormon marriages in some Territory other than Utah, why did they in 1882 incorporate section seven in the Act of that year legitimatizing the issue of Mormon marriages in every Territory?

Coming now to the Act of 1887, and we observe that the first two sections are general, referring to the compe-

tency of witnesses in any proceeding or examination for the prosecution of polygamy, etc. Sections three, four, and five are general in their character, forming a part of the general scheme and object of Congress hereinbefore stated, and must, of course, be held to apply to and over the same scope of country and Territory, namely, over all the Territories of the United States and other places over which the United States have exclusive jurisdiction.

In this connection we invite special attention to section nine of the Act of 1887. This section provides that every ceremony of marriage, or in the nature of a marriage ceremony of any kind, *in any of the Territories* of the United States, whether *either or both or more of the parties* to such ceremony be lawfully competent to be the subjects of such marriage ceremony or not, shall be certified by a certificate stating the fact and nature of such ceremony; the full names of each of the parties concerned, and various other matters, to be filed in the office of the Probate Court, *or, if there be none*, in the office of a Court having probate powers, in the county or district in which such ceremony shall take place, for record, and shall be immediately recorded and shall be at all times subject to inspection as other public records. Can there be a possible doubt that section nine is incorporated in this Act, not as a mere marriage regulation, but for the purpose of preventing the solemnization of secret Mormon marriages? And yet Congress makes this provision apply to all of the Territories. Then, again, section twenty-six provides that all religious societies, sects, and corporations shall have the right to have and to hold, through trustees appointed by any Court exercising probate powers, *in any Territory*, only on the nomination of the authorities of such society, etc. Were not the provisions of section twenty-six adopted as a part of this Act with a view to further aid in carrying out the same general purpose

and object that Congress had in the enactment of these various laws which we have been considering?

We must then acknowledge that Congress has prohibited and provided punishment for polygamy and unlawful cohabitation in all of the Territories; that it has regulated the method of keeping a record of marriages in all of the Territories; that it has legitimatized the issue of Mormon marriages in all of the Territories; that it regulates the holding of property by religious societies in all of the Territories, and that all of these provisions have direct reference to the general subject-matter and object of the Acts of Congress in this connection for the purpose of preventing and suppressing polygamy. Do these provisions not show conclusively that Congress was legislating, in regard to this matter, for all of the Territories of the United States? If so, and if Section 18 was placed in this Act as a part of that general object, must it not apply throughout the same jurisdiction as the provisions of the other sections which have been referred to? Must it not apply to all other Territories, and did not Congress intend that it should apply to all other Territories, it not having expressly confined it to one part only of its jurisdiction?

We contend that a consideration of the various statutes upon this subject can lead to no other reasonable conclusion but that Congress intended that Section 18 should apply, should govern, and should be the law of all the Territories of the United States, including the Territory of Wyoming, and there is nothing in the language of the section which prevents that construction. We have already shown, we think, clearly that in giving that construction to the section the words "the Territory" in the second subdivision of the section are perfectly consistent with such construction, and with such general application of the entire section.

IX.

Another fact concerning this legislation is forcibly presented to our notice, viz., that whenever the Territory of Utah alone is to be affected by any provision of the Act, that Territory is specifically mentioned in the particular section affecting such matter; and that fact alone, it seems to us, forces one to the conclusion that had Congress intended Section 18 to be operative only in the Territory of Utah, it would have said so explicitly. And it is not as logical to say that the converse of that might be true—viz., that when Congress has intended any section to apply to all of the Territories it has said so, and therefore Section 18, not expressly applying to all of the Territories, will not so apply,—because Congress can and frequently does pass general laws without expressing any particular jurisdiction in which such laws shall be operative, and yet they are effectual throughout the entire jurisdiction over which Congress may legislate; therefore the rule is not universal that Congress only applies the law to *all* of the Territories by express terms of reference. In the Act of 1887, outside of Section 18, Sections 3, 4, and 5 of that Act do not expressly refer to all of the Territories, but are unquestionably effectual within all of them.

We have said that in this Act, when the Territory of Utah alone was to be affected, it has been specifically mentioned. We call the attention of the Court in this connection to another kindred consideration. In all of the sections specifically referring to Utah, reference is had to some peculiar and solely local conditions which in themselves are inimical to the object of the law and the remedies to be afforded by the Act, and in no section which is made applicable to Utah alone is there anything of a general character which might just as well apply to all

the Territories. To illustrate: The first section of the Act of 1887, referring specifically to Utah, is section six; this section annuls all the laws of the Legislative Assembly of Utah which provide that certain prosecutions can only be commenced on the complaint of the husband or wife, and that all such prosecutions may be instituted in the same way that prosecutions for other crimes are. The succeeding section refers to a peculiar office in the Territory of Utah. Section eight provides that the United States Marshal of the Territory of Utah and his deputies may exercise all the powers which the Territorial peace officers possess, and gives them authority to cause all offenders to keep the peace, &c. There was unquestionably thought to be some particular reason why this provision was necessary with regard to Utah, because it was understood that the laws of Utah, and of Utah only, were unfriendly to the character of legislation now being adopted by Congress in respect to polygamy. Coming to the next section having specific reference to Utah, and we find that Section 11 disapproved and annulled certain laws of the Territory of Utah which recognize the right of illegitimate children to inherit property, and the succeeding section annulled certain laws of the Territory of Utah conferring certain jurisdiction upon the Probate Court. Evidently some jurisdiction had been given the Probate Court, which was at that time an elective office in Utah, which might interfere with the remedy proposed by Congress. It had authority to grant divorces. Then we come to Section 15, the effect of which is to annul all the laws of Utah creating a certain corporation, which corporation was connected with the Mormon Church; and the succeeding section makes it the duty of the Attorney-General to cause proceedings to be taken to carry into effect the provisions of Section 15. Section 17 annuls

and disapproves all acts of the Territory of Utah incorporating the Church of Jesus Christ of Latter Day Saints, otherwise known as the Mormon Church. Then, coming to Section 19, provision is made for the appointment of the Judge of Probate for each county in the Territory by the President of the United States, and annulling the laws of the Territory which provide for the election of such Judge by the Legislative Assembly.

Section 20 makes it unlawful for any female to vote at any election held in the Territory of Utah, and the laws of Utah in that respect are annulled. This might have been, perhaps, a general law, and yet it was known that, with the exception of Wyoming and Utah, no other Territory permitted women to vote; there being no reason why women should be prohibited from voting in Wyoming, it was undoubtedly made to apply to Utah alone. The succeeding four sections have particular reference to elections in Utah; that matter, as early as 1882, received the attention of Congress, and these sections are somewhat amendatory of Section 9 of the Act of 1882.

Section 25 abolishes the office of Superintendent of District Schools created by the laws of the Territory of Utah, and makes it the duty of the Supreme Court to appoint a Commissioner of Schools. The purpose of this is evident, and it is well known that, so far as the question of schools is concerned, it only needed Congressional attention in Utah. Then for a very evident season, in Section 27, the laws of the Territory of Utah for the organization of the militia are disapproved and annulled.

We therefore find that with very few exceptions the specific references to Utah are for the purpose of annulling some particular laws of that Territory which would not in terms be in conflict with the laws of Congress, but would, in their application, interfere with the promotion of the objects Congress had in view.

We also call the attention of the Court to Section 14, from which section it is apparent that Congress had in view the possibility of religious corporations, aimed at by the law, having property in any Territory in excess of the amount limited by law; and of course the Acts of Congress concerning the escheat of the property of such corporations, while being general in their character, were adopted with a view of preventing the acquirement of large amounts of property by the Mormon Church. It was the evil growing out of the acquirement of property by that church which caused the enactment of that portion of these statutes, and we observe that those enactments operate upon such corporations in each Territory.

We therefore repeat that when Utah is specifically mentioned, or a particular section is made applicable only to Utah, it is for some particular reason made necessary on account of the peculiarity of the laws of that Territory, and the fact that such laws were unfriendly to any legislation adverse to polygamy and kindred crimes and to any legislation adverse to the interests of the Mormon Church. Is it to be doubted that if such legislation existed in any other Territory that Congress would, by this same act, have annulled such laws of that other Territory? We think not.

We insist that the reason which we have just considered is sufficient in itself to determine that a general construction should be placed upon section eighteen.

X.

The Court below rendered an elaborate opinion in which every suggestion of argument against the application of this section in the Territory of Wyoming is marshalled with elaborate fulness. It may well be assumed that the

argument to sustain that view of the law is exhausted thereby.

At the risk of some repetition, but directly responsive to the reasoning presented by such opinion, we submit:

A.

The dominant idea which pervades the opinion below is that, in the then Territory of Wyoming, and in several other of the then Territories, the laws respecting the wife's portion were more liberal than this provision of the Federal Act now under consideration, and *hence* the opinion assumes that Congress could not have intended to abrogate such more liberal provisions by restricting the widow to her common-law third. The panegyric bestowed by the opinion upon these Territorial laws is, however, fully met by the suggestion that under such laws the plaintiff in error (and all others similarly circumstanced) are wholly deprived of any interest in the estate of their deceased husbands. That result in this case is conceded by the opinion. Hence the Territorial laws can scarcely be said to make a more liberal provision, and must therefore be assumed to have still remained in force, notwithstanding the Federal enactment. In other words, in the Territories where the suggested right of survivorship, with larger interest in the estate is provided for the widow, such provision covers only the property owned by the husband at his death. Under such laws as the opinion concedes (R. 25), the husband might in his lifetime dispose of his entire property, and even in Wyoming Territory the interest of the wife is protected solely in the homestead, whereas under Section 18 of the Federal statute this dower right attaches to "all the lands whereof her husband was seized "of an estate of inheritance at any time during the mar- "riage, unless she has lawfully released her right thereto."

Quite independent, therefore, of the question as to the correct interpretation and application of this section, the argument indulged below in support of an assumed policy adverse to its application in any Territory other than Utah wholly fails. Illustrated by this case, the assumed more liberal provisions of the Wyoming statute made no provision to protect the rights of the plaintiff in error. Under the assignment by her husband, the creditors take all of his property—for there is no suggestion in this record that there is even a homestead exempt from the operation of the assignment. The contrary may be assumed because the assignees are in possession of all of the assigned property, although the plaintiff in error did not join with her husband in such deed of assignment. Whilst not admitting the force or application of the argument *contra*, or that the question of policy can control the plain words of the Federal statute, it is evident that the provisions of Section 18 of the Act of March 3, 1887, in endowing the wife or widow of one-third part of all the lands whereof her husband is seized of an inheritance during the coverture, is, in effect, a far more liberal provision than that found in the laws of the then Territories, which gave the husband the entire right of disposal, and, barring any dower right of the wife therein, gives to her only upon his death a survivorship interest of greater or less amount in the property which may be in his ownership at the time of his death. The elaborate argument indulged in the opinion on this head may therefore be dismissed from further consideration by the single suggestion that the plain and simple provisions of Sec. 18 of this Federal Act in giving the wife the common law dower right in all lands owned by her husband during coverture is in effect and in fact a much more liberal provision than that contained in the statutes of the then Territories relating to this subject.

B.

By way of recital, the opinion sets forth the original Act of 1862 against polygamy, the amendatory Act of March 2, 1882, and the second amendatory Act of March 3, 1887. Section one of the original Act (now Sec. 5352, U. S. Revised Statutes) and Section 3 thereof (now Sec. 1890, U. S. R. S.) were admittedly of general application in all the Territories; and Section 3 thereof alone was limited to Utah by expressly annulling certain legislative Acts of that Territory.

The Act of 1882 contains nine sections; eight of them are of general application—but one (Sec. 9) relating alone to Utah, and creating the so-called "Utah Commission."

The Act of 1887 contains 27 sections. Of these, 16 sections expressly relate alone to Utah, and afford sixteen separate illustrations of the fact that when in this Act Congress *meant* to limit its legislation to *that* Territory, it expressly named *that* Territory therein. Six sections are general in their application. In four of these sections the word "Territory" or "Territories" is not used, but the language employed demonstrates that Congress intended the statute to have full Territorial operation. In one section (26) provision is made for the manner in which religious societies shall hold property "in a Territory," and in Section 18 (the dower section) no words of limitation appear.

The conclusion to be drawn from this summary is not that indulged by the Court below, viz., that where Congress in this Act intended its legislation to be general it expressly named all the Territories. Analysis of the Act in this respect demonstates the contrary. Where four out of the six general sections of the Act do *not* describe in terms any Territory or Territories, and where sixteen sections thereof relate to Utah alone by express naming of

that Territory, it may well be asserted (1) that when Congress therein intended a restricted or local application of its legislation to Utah alone it expressly said so, and (2) where it intended other sections to apply generally neither words of limitation nor expansion appear in respect to naming the Territories wherein they should so operate, and hence they are necessarily given operation in all the Territories.

On what principle of construction, then, can it be said that Sec. 18 in using the words "the Territory" meant, and only meant, one Territory, and that one Territory—by judicial choice—Utah? All attempt to lay foundation for subsequent reasoning on this basis must necessarily fail, because the words of Sec. 18 are general—contain no limitation, and read as they appear in the Act no Territorial restriction can be predicated thereon.

Admit the dominant intent of Congress in this legislation to be the suppression of polygamy and its attendant social evils. That intent is made to cover all the Territories, and equally broad must be any general provision having cognate relation thereto. The argument which seeks to limit the dower section to Utah alone would logically demonstrate that because polygamy chiefly flourished in that Territory hence all restrictive or prohibitive legislation upon that subject should have application alone in Utah. Indeed, on this line the argument of the opinion defeats itself. The opinion (R. 26) suggests the reasons why this dower section was enacted as directly applicable to polygamous conditions. If those conditions existed alone in Utah, and the legislation of Congress had been from the beginning confined only to that Territory in providing measures for the prohibition and punishment of polygamy, then there might be possible ground for argument in favor of the contention that Section 18 of the

Federal law of March 3, 1887, had intended operation only in Utah Territory. But where the legislation addressed to the dominant purpose—the suppression and punishment of polygamy—is of general application in all the Territories, how can it be said that the provisions of this dower section should be locally confined to Utah, when it is asserted that it was the conditions growing out of polygamy which induced its enactment? All legislation of Congress which prohibited and punished polygamy was intentionally made general throughout all the Territories. It was known to Congress and to the public that the Mormon religion had its followers in other Territories, including Wyoming. When, then, the laws of Utah with respect to dower rights are abrogated to aid the suppression of polygamy, and by which Federal enactment all persons residing in Utah, although not members of the Mormon Church, nor affiliated in any form with its doctrines, were yet held subject to the Federal law, why should it be said that in all other Territories where this same general provision for the suppression of polygamy obtained all residents of such other Territories are exempt from the same legislation which affected those in Utah, who were in no sense connected with the Mormon establishment or practised its teachings? The proposition is that Congress finding a social evil existing, mainly in Utah, but also in other Territories, passed general enactments for its suppression. Incidental to that main purpose, and to aid its accomplishment, Congress undertook to provide for the recognition of the dower right of widows and married women in all the property of the d[redacted]d husband owned or acquired during coverture. To assume that this provision is restricted to Utah would be to say that the minor incident controlled the major condition which induced the Federal enactments. When Congress plainly makes its

legislation regarding polygamy general throughout all the Territories, this dower provision, which is without limitation on its face, cannot be restricted, except upon the assumption that the general purpose, to wit, the suppression of polygamy, is *pro tanto* controlled by reading into the dower provision restrictive words which are not found on the face of the statute.

C.

Great stress is sought to be laid by the opinion on what is alleged to have been the contemporaneous construction of this dower section throughout the then Territories. Yet it is important to note that the only judicial ruling on the question by the Supreme Court of any Territory is that of *Chadwick et al.* v. *Tatem et al.* (23 Pac. Rep. 729), wherein the Supreme Court of Montana Territory expressly held as follows :

" In 1887 Congress passed an Act providing for dower " for the widow in this and other Territories, thereby " placing the question beyond repeal by our Legislative " Assembly while we remain in a Territorial condition." Citing the Act of March 3, 1887, *supra.*

And the citation in the opinion below of the decision by the Supreme Court of the District of Columbia in *United States* v. *Crawford* (6 Mackay, 319), wherein it was held that the original Act of 1862 (U. S. R. S. 5352), with its amendatory Acts of 1882 and 1887, are not in force in the District of Columbia, is met and overcome by the fact that the present Court of Appeals of said District, in March, 1895, held the express contrary in *Knight* v. *United States* (Wash. Law Rep., Vol. 23, p. 202). Commenting upon the former case, the Court, in the latter case, observes :

"The case of *United States* v. *Crawford* (6 Mackay, " 319), referred to in argument, cannot be relied upon as a " controlling authority in this case. There the indictment " was not for bigamy, but for fornication. Some of the " general reasoning in the case does undeniably maintain " that Sec. 5352, Revised Statutes of the United States, is " not in force in this District; but we can hardly think " that the facts of that case required the Court to go so " far."

It is true this Court has often held that the long continued and contemporaneous construction of a statute makes such construction controlling, but it is to be observed that there is here no such length of time, and no such general construction, either judicial or otherwise, which fairly brings this case within the rule. Indeed, and simply for illustration, it may be suggested that in Hubbell's Legal Directory for 1895 the portion thereof relating to Wyoming was prepared by the counsel who represented the defendants in error in the Court below, and yet the same counsel, at page 79 of that standard work, thus declare:

"*Dower.* By Act of Congress the widow is endowed of " a third part of all the lands whereof her husband was " seized of an estate of inheritance at any time during the " marriage, unless she shall have lawfully released her " right thereto. The existence of dower in the State has " been denied by recent decisions of our Courts. Under " our State statute there is neither dower nor tenancy by " courtesy."

D.

It is a mistake to assume that the Act of Congress is to be considered as subordinate to the rule against repeals of statutes by implication. As shown under heading VII,

supra, this rule is not applicable here. Where Congress provides general legislation, it *pro tanto* displaces Territorial statutes, not by way of repeal, but solely because the dominant power has spoken its will, and hence the lesser authority must retire. It is not a case of repeal by implication in the sense that the term is used and understood, but it is a case where with full power to act, in the absence of Federal legislation, the Territorial legislature has enacted its statute, which, when Congress does speak, becomes then of no force, because supplanted by the superior will. If the contrary rule here obtained, general legislation of Congress affecting Territories would be held inoperative, unless in terms it recited and repealed specific Territorial acts which it plainly displaced. Reduced to the last analysis, it would be inoperative for the punishment of crimes, unless Congress should in terms repeal all Territorial legislation affecting the same subject. Such construction would be a *reductio ad absurdum*.

E.

It is respectfully submitted that the Court below mistook the fundamental distinction between the interpretation and construction of statutes. Interpretation only takes place where the text conveys some meaning. Construction is resorted to where there is apparent contradiction. Plainly the language of this section conveys one meaning; that meaning is clearly expressed and without doubt. Yet the Court below indulges in extended argument seeking to create a doubt, and then resorts to construction in order to dispose of it.

In *U. S.* v. *Graham* (110 U. S. 219) this Court said:

"Such being the case, it matters not what the practice
" of the Department may have been or how long continued,

" for it can only be resorted to in aid of interpretation, and " it is not allowable to interpret what has no need of in- " terpretation; if there were ambiguity or doubt, then " such a practice begun so early and continued so long " would be in the highest degree persuasive, if not abso- " lutely controlling in its effect; but with language clear " and precise and with its meaning evident, there is no " room for construction, and, consequently, no need for " anything to give it aid."

In *Woodbury* v. *Berry* (18 Ohio St. 462) it was said:

" But, notwithstanding all this, *ita lex scripta est.* " The language as it stands is clear, explicit, and une- " quivocal. It leaves no room for interpretation, for " nothing in the language employed is doubtful. We are " satisfied, by considerations outside of the language, that " the Legislature intended to enact something very different " from what it did enact, but it did not carry out its inten- " tion, and we cannot take the will for the deed. It is " our legitimate function to interpret legislation, but not " to supply its omissions."

In *People* v. *Greene Co.*, 13 Abb. N. Cas. (N. P.) 424, Westbrook, J., said:

" Any attempted construction of the Act which departs " from its language, and purporting to be based on the in- " tention of the Legislature in the absence of any key to " the meaning of the words afforded by other parts of the " act, is mere speculation, and must necessarily vary with " the convictions of the reasoner as to what the law should " have been."

In *Gardiner* v. *Collins* (2 Pet. 93), speaking by Mr. Justice Story, this Court said:

" What the legislative intention was can be derived only " from the words they have used; and we cannot specu- " late beyond the reasonable import of these words. The

" spirit of the Act must be extracted from the words of the " Act and not from conjectures *aliunde*."

In *Coe* v. *Lawrence* (1 El. & Bl. 516 ;. 72 E. C. L. 516), Lord Campbell said :

" I cannot doubt what the intention of the Legislature " was, but the intention has not been carried into effect " by the language used. * * * It is far better that " we should abide by the words of the statute than to seek " to reverse it according to the supposed intention."

These authorities amply illustrate the settled doctrine of the law, to wit, that interpretation is not employed where the meaning is clear and unambiguous, nor can construction be indulged upon an assumed doubt.

F.

This dower section cannot find aid for its interpretation by resort to the debates in Congress attending the passage of this law. Even if such aid were admissible, it does not here exist. The entire discussion on the subject in both House and Senate is comprised in the following extract taken from the Senate proceedings:

"*Mr. Edmunds.* I think on page 13, Section 24, as a " matter of precaution (although I believe the clear im- " plication would be that now in respect to the matter of " doubt), that after the paragraph *a* of Section 24 there " should be added, after the word ' marriage,' the words:

" ' Unless she shall have lawfully released her rights " ' thereto.'

" That paragraph now reads:

" ' A widow shall be endowed of the third part of all " ' the lands whereof her husband was seized of an estate " ' of inheritance at any time during the marriage.'

" That was taken verbally, I believe, from the laws of

"the State of New York, which are very much like the "laws of all the other States; but in view of a phrase "that exists later on, which I need not take time to refer "to, the implication might arise that even if she had re- "leased her dower by joining in a conveyance, still the "statute said positively that she should have it neverthe- "less; and in order to guard against any possible ques- "tion about it, I move to add the words I have named.

"*The President pro tempore.* The amendment will be "read at the desk."

"*The Chief Clerk.* In Section 24, after the word 'mar- "'riage,' at the end of line 3, it is proposed to add—

"'Unless she shall have lawfully released her right "'thereto.'

"The amendment was agreed to.

* * * * * * *

"*Mr. Edmunds.* Recurring now, Mr. President, to "paragraph *a* of Section 24, where the amendment was "just agreed to, as it stands in the print and which was, "of course, right as it stood before, there is a period after "the word 'marriage.' That period should be stricken "out, so as to leave no interruption in the sentence.

"*The President pro tempore.* That change will be made "unless there be objection."

Cong. Rec., January 6, 1886, 49*th Cong.*, 1*st Session. Vol.* 17, *Part I, pp.* 457, 458.

The Court below assumes that because these dower provisions are found in a separate section that fact is of no importance. We submit the contrary. The bill as passed by the Senate; the substitute bill as reported to and passed by the House, and the bill reported from the Conference Committee, which was a substitute for both former bills, each and all place these dower provisions in a separate section. The bill was before Congress and its committees for many months, extending from the first into the second session of the 49th Congress. On its face these dower provisions embraced in a separate section were

plainly general in their application. It is incredulous that some mind did not discover the meaning now sought to be given by the Court below and suggest the proper amendment during all the time this legislation was before Congress. The simple addition of the words "of Utah," following the words "the Territory," in subdivision *b* of the section, would have made it absolutely plain and certain. While those words were *not* added by Congress, the Court below inserts them, notwithstanding the settled rule of construction to the contrary, as illustrated by the ruling of this Court in *Newhall* v. *Sanger* (92 U. S. 765), that "there is no authority to import a word into a statute "in order to change its meaning."

We submit the judgment below should be reversed.

Respectfully submitted.

A. T. BRITTON,
A. B. BROWNE,
C. N. POTTER,
Atty's for Plaintiff in Error.

Office Supreme Court, U. S.
FILED
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JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

CASE NO. 14,930.

AMANDA W. FRANCE,

Plaintiff in Error.

vs.

JOHN W. CONNOR

AND

WILLIAM R. BROWN,

Defendants in Error.

343

IN ERROR

TO THE

Supreme Court of the State of Wyoming.

Brief of Defendants in Error.

MELVILLE C. BROWN,
Attorney for Defendants in Error.

AMANDA W. FRANCE,
Plaintiff in Error,
vs.
JOHN W. CONNOR
AND
WILLIAM R. BROWN,
Defendants in Error.

BRIEF OF DEFENDANTS IN ERROR.

STATEMENT OF CASE.

On the first day of April, A. D. 1889, the plaintiff in error, and plaintiff in the court below, filed her petition in the District Court of the Third Judicial District in and for Carbon county and Territory of Wyoming, alleging in brief the following facts:

That the said plaintiff on the 7th day of February, A. D. 1887, at Denver, in the State of Colorado, intermarried with James France, late of the county of Carbon and Territory of Wyoming, who afterwards, on the 21st day of August, A. D. 1888, departed this life intestate, leaving said plaintiff, his widow, surviving him.

That during the marriage estate the said James France was seized of an estate of inheritance in certain lands and tenements and real estate, situated in the said county of Carbon and Territory of Wyoming, which are then fully described in said petition.

It is further alleged that plaintiff, by virtue of her said marriage, upon the death of the said James France, became entitled to ~~the~~ dower in the lands and tenements so described; that dower has never been assigned or set off to plaintiff, and that she has never received any compensation or equivalent therefor, and she has never lawfully, at any time, released her

right thereto or any part thereof; further alleges that during the said marriage, to-wit, on the 16th day of March, A. D. 1888, said James France, being insolvent, did make, execute, acknowledge and deliver to the said John W. Connor and William R. Brown an assignment of all his property for the benefit of his creditors; that the lands described in the petition were conveyed by said France to the said John W. Connor and William R. Brown by the terms of the said assignment; that the assignees accepted the said trust created by the said assignment, and under the assignment entered into possession and took control of the assets of the said James France, including the said lands described; alleges demand upon defendants to set off her dower in the lands aforesaid, and that defendants refused so to do; that the defendants, since the death of the said France, have received the rents and profits of the said lands and tenements and have not accounted to said plaintiff for the same or any part thereof; prays that dower may be set off and assigned to her according to law; that an accounting may be had of the rents and profits of the said lands and tenements since the death of James France, and that plaintiff may have and recover the portion and share to which she is entitled by reason of her said dower interest.

The petition is printed at length on pages five to nine, inclusive, of record.

To this petition defendants in error, on the 30th day of April, A. D. 1889, filed their demurrer in said court, presenting two grounds: First, that said petition does not state facts sufficient to constitute a cause of action against said defendants and in favor of said plaintiff; second, that said court is without jurisdiction to grant the relief prayed for in the petition.

For demurrer to petition see page 11 of record.

The demurrer to the said petition was sustained in the

District Court, and the plaintiff not asking leave to plead further, judgment for costs in favor of the defendants was entered by the Court. The case was thereafter by writ of error taken to the Supreme Court of the said Territory of Wyoming, and pending proceedings in error in said Court, Wyoming was admitted into the Union as one of the states thereof. Under the act of admission and the Constitution of Wyoming, the Supreme Court of the State succeeded the Supreme Court of the Territory, heard said case and handed down its decision on the first day of June, A. D. 1891.

By its said decision the Supreme Court of the State sustained the ruling of the lower Court. The opinion rendered by Chief Justice Groesbeck of the Supreme Court of the State, and concurred in by the other judges, is found between pages 16 and 30, inclusive, of record.

In order that the question raised by the demurrer to the said petition that is to be considered here may the more clearly appear, we will state further that the legislature of Wyoming enacted a statute abolishing dower, which is in the words following:

"Dower and the tenancy by the courtesy are abolished, and neither husband nor wife shall have any share in the estate of the other, save as herein provided."

It may be of value to state in passing that, in lieu of dower, the wife was made the heir of the husband to the extent of one-half his property; if there were children, the other half going to the children. If there were no children, three-fourths of the property went to the surviving wife. A homestead exemption was created by legislation, exempting a homestead of the value of fifteen hundred dollars ($1,500.00). Five hundred dollars ($500.00) more are exempt to the family. Some other provisions were made by law in the interests of the family, and in the interests more especially of the wife. The statute abolishing dower is number 2221 of the

Revised Statutes of Wyoming. The statutes giving the exemptions are found in the Revised Statutes of Wyoming, Sections 2780 to 2790, inclusive.

These statutes were adopted in the early legislation of the Territory of Wyoming, and have ever since, and now, remain a part of the statutes of Wyoming, both as a Territory and as a State, and were in force at the time the claim for dower was made in this case, unless repealed and set aside by the Act of Congress of March 3rd, A. D. 1887, Volume XXIV, Statutes-at-Large of the United States. That part of Section 18 of the said Act of Congress, applicable to this case, reads as follows:

"A widow shall be endowed of a third part of all the lands whereof her husband was seized of an estate of inheritance at any time during the marriage, unless she shall have lawfully released her right thereto."

We understand the plaintiff to claim that the act of the legislature of Wyoming abolishing dower was repealed by this part of Section 18 of the Act of Congress.

An Act of Congress entitled: An Act to Provide a Temporary Government for Wyoming, was approved July 25th, 1868. A part of Section six (6) of said act, limiting the powers of the said territory, reads as follows:

"The legislative power of the territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States and the provisions of this Act."

This provision, made general, I believe, to all the territories of the United States, has been incorporated in the Revised Statutes of the United States.

These portions of the several acts of Congress and the statutes of Wyoming are to be considered in deliberating upon the question raised by the general demurer to plaintiff's petition. The plaintiff in error here was the plaintiff in error in the Supreme Court of Wyoming, and also plaintiff in the District Court.

ARGUMENT.

The question to be considered here, as in the courts below, is, therefore: Does the plaintiff's petition state facts sufficient to constitute a cause of action in favor of the plaintiff and against defendants? and, as underlying this question and upon which it is to be determined is raised the further question: Does the part of Section 18 of the Act of Congress of March 3rd, 1887, repeal or abrogate Section 6 of the Organic Act of Wyoming, or that portion thereof quoted in the statement, which limits the power of the legislature to rightful subjects of legislation, and the statute of the Legislature of Wyoming enacted thereunder abolishing dower? If Section 18 of the Act of Congress repeals or abrogates the Organic Act, and repeals the laws of the Wyoming Legislature enacted thereunder, and said Act of Congress is in force and was in force in the then Territory of Wyoming, it is admitted then that the petition states a cause of action; otherwise, it does not.

In determining the question presented it becomes necessary to consider the relation of the Territories to the National Government. It is admitted that Congress has power to legislate for the Territories, but if it is claimed there is express constitutional authority for such legislation, it is denied. It is believed the authority of the Government in this behalf is derived from its implied obligation to its citizens, and is based upon the doctrine of necessity.

United States vs. Gratiot, 39 U. S., 537.

When Congress legislates for a Territory, fixing certain limits within which the people thereof may legislate for themselves, and thereafter approves their legislation either by silence or otherwise, just how far Congress may go in setting such legislation aside has never been satisfactorily decided by the Courts.

In the case of the First National Bank of Brunswick vs. The County of Yankton, 101 U. S., 129, Mr. Chief Justice Waite, delivering the opinion of the Court, said:

"The Territories are but political subdivisions of the outlying dominion of the United States. They bear much the same relation to the General Government that counties do to the States, and Congress may legislate for them as States do for their respective municipal organizations. * * * * * Congress may not only abrogate laws of the Territorial Legislatures, but it may itself legislate directly for the local government. It may make a void act of the Territorial Legislature valid, and a valid act void. In other words, it has full and complete legislative authority over the people of the Territories, and all the departments of the Territorial government."

Accepting the comprehensive statement of Mr. Chief Justice Waite, as above quoted, as accurately measuring the power of Congress over the Territories, the question yet remains: Has Congress, by its action, annulled the statute of Wyoming abolishing dower? If the relation of the Territorial government to the General Government is the same as that of municipal corporations to the State that creates them, then the laws of the State amending the charters of municipalities and abrogating ordinances will be entirely in line with the legislation of Congress amending the organic laws of the Territories and annulling statutes of the Territorial Legislatures. It may, therefore, be advantageous to examine the legislation of States in this respect, and the decisions of Courts thereunder.

By analogy, it would seem that if the general law of a State touching matters under the control of municipalities does not repeal by implication charters and special acts passed for the benefit of such municipalities, then a general law of Congress touching matters within the power of a Territorial Legislature would not repeal special acts of Congress or portions thereof vesting in the Territorial Legislatures or Legis-

lature special powers. That statutes of a general nature do not repeal, by implication, charters and acts passed for the benefit of particular municipalities, has been often decided. In the case of the Stonington Savings Bank vs. Davis, 14 N. J. Eq., 290, the Court say:

"But it is insisted on the part of the defendant that the provisions of the city charter in regard to assessments of taxes upon real estate are repealed by the general tax law of 1854, so far as the provisions of the two statutes are in conflict, and that, by the provisions of the general tax law, the mortgagee and not the land owner is bound to pay the tax upon the land to the extent of the mortgage debt; and where it has been paid by the land owner, the mortgagee living in another township, he is entitled to have it deducted from the amount due upon the mortgage. It is obvious that the provisions of the city charter and of the general tax law are conflicting and irreconcilable. The former requiring the payment of the tax by the mortgagee, or, in case he resides out of the township, authorizing the tax to be paid by the land owner and to be deducted from the amount due upon the mortgage, the latter requiring the tax to be assessed upon the land, the land to be sold for non-payment. And in case the tax is paid, or the land redeemed by the mortgagee, authorizing the amount so paid, with interest, to be recovered out of the land, in addition to the mortgage debt. The provisions of the city charter are not repealed by the general tax law in the absence of express words for that purpose."

The case of the State vs. Branin is a case growing out of the assessment of taxes. By the general laws of the State, a poll tax of fifty cents was required to be assessed upon every white male inhabitant in the State, of the age of twenty-one years and upwards. The 25th section of the city charter of the city of Trenton provides that "It shall, and may, be lawful for the Common Council of said city to order and cause to be assessed and raised by taxes, from year to year, such sums of money as they shall deem expedient for defraying the expenses of lighting the streets of said city,

regulating and paving, flagging and gravelling the streets, maintaining and supporting the poor, schooling poor children, for defraying the contingent expenses of said city, and for all other subjects and purposes authorized by this act, to be assessed and collected in such manner as the said Common Council shall by ordinance direct."

Under this charter it was held that the city was not inhibited from assessing a poll tax against the residents of the city, in addition to the poll tax of fifty cents levied under the general law of the State.

Referring to the language of the charter, Mr. Justice Potts, speaking for the Court, uses the following language:

"This language confers upon the Common Council exclusive jurisdiction over the whole subject of taxation for city purposes; they are not only to determine what amount is to be raised, but how it is to be raised. True, the Common Council can pass no ordinance inconsistent with the laws and constitution of this State or of the United States; but the State law does not prohibit a poll tax for city purposes; its language is directory, and has reference only to those taxes which were the subject matter of the act."

State vs. Branin, 23 N. J. Law, 508.

The case of the State vs. Clark was one where, by general law, the laying out of roads and highways was required to be done in particular, and the ordinances of the City of New Brunswick required the laying out of roads and streets within its limits to be done in a different way. The Chief Justice, in passing upon the question presented in that case, used the following language:

"The road laid out is within the chartered limits of the City of New Brunswick. It was laid out by surveyors of the highways under the provisions of the general road act. The charter of the city confers upon the Common Council the power of laying out and opening any street, road or highway, in any part of the city. It prescribes the agents by whom and the method in which the power shall be exercised. It is,

in many of its material provisions, inconsistent with and repugnant to the terms of the general law. Both clearly cannot be exercised within the same territorial limits. The present city charter is later in point of time than the general law, and consequently, so far as they are repugnant, the later law repeals the former. But irrespective of the dates of the respective laws, the general law cannot prevail within the corporate limits of the city. The charter of the city confers upon its inhabitants the special franchise of making its own laws in regard to the opening of streets within its territorial limits. So far as it extends it is a grant of sovereignty, a delegation of a part of the sovereign power of making laws. It is, in its essential character, exclusive. Doubtless the legislature may, at its pleasure, revoke the power or limit its exercise. It may repeal the charter or extend the operation of general laws, by express terms, over the city; but until that is done, while the power of legislation upon a given subject remains in the city government, and is exercised in accordance with the charter, those laws must prevail to the exclusion of the general laws of the State, where they are inconsistent or repugnant. The well settled rule of construction, where contrary laws are in question, is that the law general must yield to the law special. *Noyes Maxims, 19.*

"The principle has been repeatedly recognized in this Court. In *The State vs. Branin, 3 Zab., 485*, it was expressly decided that a general statute repealing all acts contrary to its provisions would not repeal the ordinances in any municipal corporation upon the same subject matter, and that the power of assessing and collecting taxes, in such mode as the Common Council shall by ordinance direct, confers upon the council exclusive jurisdiction over the whole subject of taxation for city purposes."

State vs. Clark, 25 N. J. Law, 54.

The doctrine stated in the case of the State vs. Clark has been maintained in Massachusetts and New York.

See Goddard's Case, 16 Pick., 504.

Bisby vs. Mansfield, 6 Johns, 84.

In the case of Ottawa against the County, 12 Ill., 339, and in Egypt St., 2 Grant (Pa.), 455, it was held that special

laws conferring particular rights upon municipal corporations were not repealed by subsequent statutes upon the main question, general in character.

State vs. Morristown, 33 N. J. Law, 57.

Bong vs. Hiestand, 20 La. An., 139.

Railway Co. vs. Alexandria, 18 Grat. (Va.), 176.

Hammond vs. Haines, 25 Md., 541.

Louisville vs. McKean, 18 B. Mon., 9.

Cumberland vs. Magruder, 34 Md., 381.

Whether a general statute on a particular subject, repealing all acts contrary to its provisions, repeals prior special enactments vesting particular rights upon municipal corporations, depends upon the intent of the legislature in passing the general law. This seems to be the concensus of opinion as gathered from the decisions of the courts. It is held, however, that the special acts are not repealed by the general statute, unless intention to repeal the special statute by the subsequent general law is expressed; that there is no implied repeal under such circumstances. It is said that the intention of the lawmaker in passing the general statute is to be collected from the entire course of legislation.

Dillon on Municipal Corporations, Sec. 54.

How are we to determine, then, whether Congress, in enacting Section 18 of the Act of Congress of March 3rd, 1887, intended the same to apply to conditions existing in Wyoming, and intended thereby to repeal either the section of the Organic Act of the said Territory, before referred to, vesting in the Legislature thereof the power of legislating upon all rightful subjects, and to annul the ordinance or law enacted by the said Legislature, repealing and setting aside the common law right of dower? Surely there is nothing in the act from which the express intention of Congress so to repeal and annul can be gathered.

Express intention to repeal or abridge the power of the

Legislature, and to annul the act abolishing dower, not appearing in said act, is there any other fact or circumstance connected with the history of Congressional legislation for the Territories tending to show such intention of Congress to repeal or annul? Nearly all the legislation of Congress for the Territories has been local or special in its character. The organic acts, as they are called, are all in a sense special acts, giving certain governmental powers to communities within the boundary lines of the territory described in such acts. These acts are all local in their application, and to a degree special, in so far as they affect particular localities and subjects, and not the country at large. Congress has generally contented itself with passing these organic acts and erecting thereby these Territorial governments or municipalities, thereafter leaving them to control their own local affairs, limiting them, of course, to the terms of the act creating their political existence. It is very rare, indeed, that Congress has annulled, or attempted to annul, the legislation of any of the Territories, excepting legislation in the Territory of Utah.

The legislation of Congress that we are now discussing, that of March 3rd, 1887, was to amend Section 5352 of the Revised Statutes of ~~Utah~~. This section, as a matter of history, is known to have been aimed at the system of polygamous marriage existing in the Territory of Utah. Congress has never undertaken to pass criminal laws, or any other laws, for the government of the Territories. Polygamous marriage, and the power of the Church of Latter Day Saints, founded upon polygamy, had assumed such proportions in Utah that the Legislature and the government were subservient to it, and no other way presented itself to Congress but direct legislation for the Territory. Incidentally, other Territories are included in some portions of this legislation, but since it is not and never has been the policy of Congress to legislate directly for the Territories outside of

the organic acts, it would seem that no legislation should be presumed to be for the Territories generally, unless so expressed.

The statute in question grew out of the polygamous condition existing in Utah, and is aimed at that solely. Considering this fact, and the refusal of Congress to legislate for the Territories generally, can any presumption arise in construing the act in question, that its provisions are to apply generally to the Territories unless made so to apply by express words. This same Act of Congress punishes fornication and adultery. If this act repeals the law of the Territory on the subject of dower, then it repeals our laws punishing adultery and fornication. If these laws are repealed, then the Courts of Wyoming have been, under our Territorial conditions, and now are, as a State, administering laws that are void. If the section of the act under discussion is applicable to Wyoming, then the entire act, general in character and not made local by its express terms, is in force in all the Territories, in the District of Columbia, and in forts, arsenals and other localities over which the United States has exclusive jurisdiction.

Offenses created by the statutes of the United States are punishable exclusively in the Courts of the United States, unless express authority is given for the punishment of such offenses in other courts. The offenses of fornication, etc., created by the same statute that refers to the matter of dower, are not made, by the terms of the act, punishable in any court unless it be Courts of the United States, or some tribunal created by the laws of the United States. All these offenses have been punished in Utah by the Territorial Courts having the jurisdiction of District and Circuit Courts of the United States, as offenses against the United States, and not as offenses against the Territory of Utah. The United States has paid the expense of prosecuting persons who have violat-

ed these laws. They are not made Territorial offenses by the express language of the Act of Congress, and do not seem to have been intended to take the place of laws enacted by the Legislatures of the various Territories punishing polygamy, fornication and cognate offenses.

So far, then, as the intention of Congress can be gathered from its general legislation for the Territories, and especially its legislation covering the offenses dercribed in this particular act, it is quite clear that Congress never intended, by the act under discussion, to repeal the acts of the several Legislatures of the Territories upon the question of dower and other questions covered by said act.

The Territorial Courts, so far as counsel is advised, other than the courts of Wyoming, that ~~has~~ have had these statutes under direct consideration, ~~is~~ are the ~~Supreme~~ Court of the District of Columbia. One Crawford was prosecuted for fornication or adultery, under this act of March 3rd, 1887, found in the United States Statutes-at-Large, Vol. XXIV, 635, and that Court held the statute not in force within the limits of the District of Columbia.

U. S. vs. Crawford, Central Reporter, 12, pp. 431. + 6 Maskey

We are unable to see how the Act of Congress, or any part thereof, can be in force in Wyoming, if it cannot be in force in the District of Columbia.

Again, the terms of the act in question, the arrangement of its sections, all tend to show that at the time it was passed by Congress the lawmakers had in mind conditions existing in Utah and not in the other Territories of the United States. There are in this act twenty-seven sections, and in three of these only is the word "Territory" used. The remaining sections are either general in form or, by the letter thereof, applicable only to Utah. The sections not especially local in terms, but following sections that are local and special, should, it would seem, be construed as referring to the special and

local matters referred to in the section preceding. In speaking of this question, the Supreme Court of Wyoming used the following language:

"The division of a law into sections is purely arbitrary, and is controlled by no rules of grammar, logic or law, and is made merely for convenience of reference, and is no more a part of legislation than milestones are a part of the highways."

So of Section 18—the dower section: the language is not to be severed from its actual and natural connection with what follows and what precedes. If the words "Sec. 18" had been omitted, and had been inserted where Section 19 is placed, there would have been no question raised. What effect can these words, "Section 18," have upon the meaning or effect of the language of the act?

See pp. 28 of Record.

Section 18 follows sections local in character. Subdivision "B" of said section also refers to residents of the Territory, evidently meaning the Territory of Utah referred to in the preceding section. Any other construction, it is believed, is strained and unnatural. Surely, it will not be said that when, by the express language of the section preceding Section 18, they are made to apply only to the Territory of Utah, and no words are found in Section 18 to indicate a change of purpose on the part of Congress, that this section shall apply generally to other Territories—in other words, that Congress changed its purpose and made this section to apply generally to all the Territories, when there is nothing in the section to indicate, in the slightest degree, such change of purpose on the part of the lawmaker. As strengthening the view of the subject presented here, the attention of the Court is called to so much of this act as repeals the statute of Utah bearing upon many subjects of legislation covered by the act of Congress, and no words are found expressly repealing or annulling the legislation of other Territories.

The statute of Utah on the subject of dower was not annulled in terms by the Act of Congress, because wholly unnecessary. Section 18 and the three preceding sections of the act are made to apply to Utah in express terms, and the dower act of Utah was thereby annulled or repealed because of repugnance.

But this whole question was very fully and, it is believed, ably discussed by Mr. Chief Justice Groesbeck of the Supreme Court of Wyoming, and to this decision, found in the record in this case, the defendants in error invite the careful attention of this Honorable Court.

Respectfully submitted,

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